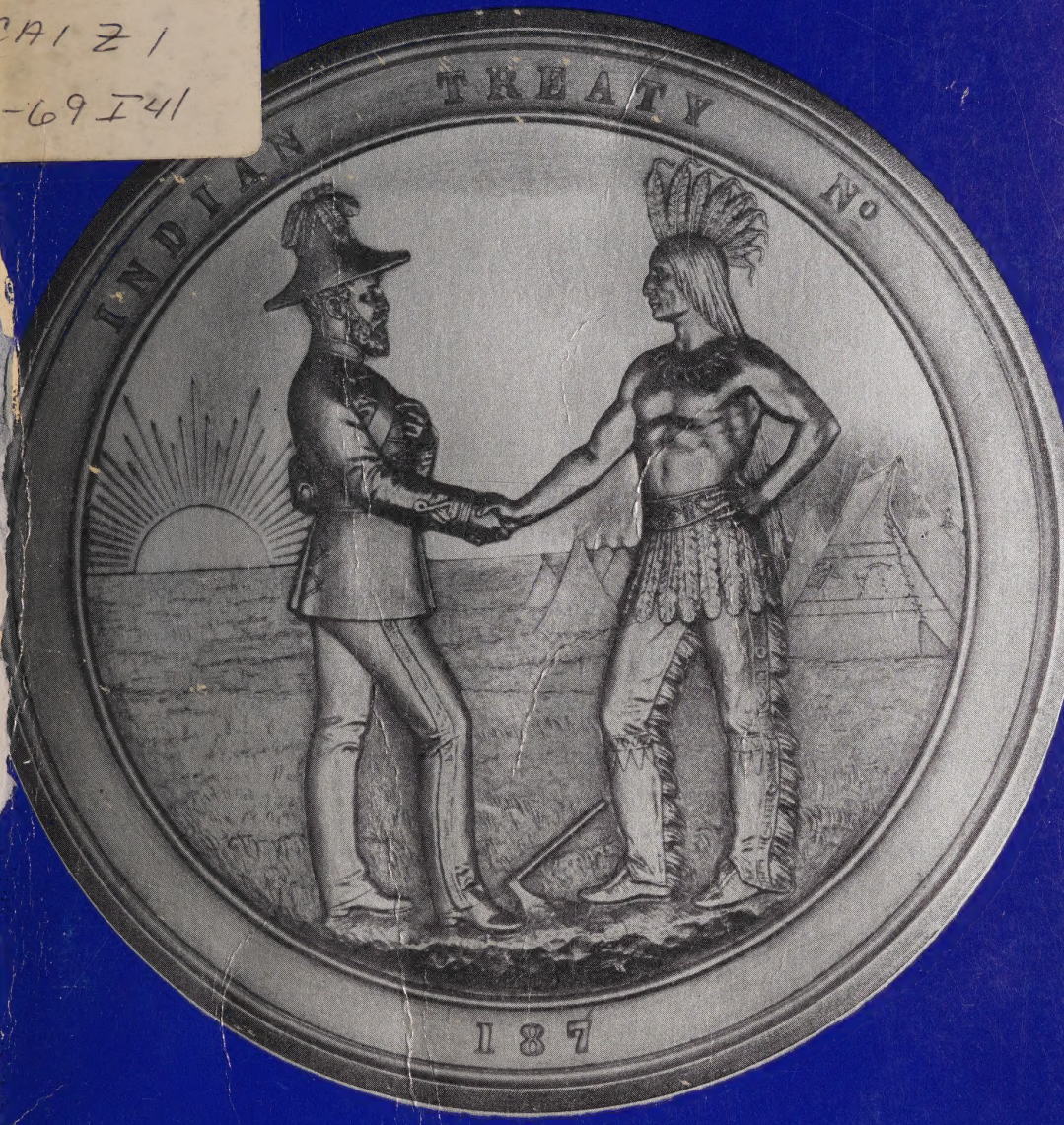
INDIAN CLAIMS IN CANADA

An Essay and Bibliography



REVENDICATIONS DES INDIENS AU CANADA

Un essai et bibliographie

Indian Claims in Canada

An Introductory Essay and Selected List of Library Holdings

Research Resource Centre,
Indian Claims Commission,
Ottawa.

Revendications des Indiens au Canada

Un Exposé préliminaire et une Sélection d'ouvrages disponibles en Bibliothèque

Centre de documentation et
d'aide à la recherche,
Commission d'étude des
Revendications des Indiens,
Ottawa.

Avant-propos

Lorsqu'il entreprend d'étudier les revendications des Indiens, Métis et Inuit, le chercheur se heurte à de sérieuses difficultés d'accès aux documents indispensables, qu'ils aient ou non été publiés. C'est afin de lui faciliter la tâche que la Commission d'étude des revendications des Indiens a créé, à Ottawa, un Centre de documentation et d'aide à la recherche.

La bibliothèque du Centre dispose d'une importante collection de livres, d'articles, de revues, de pièces de procédures, de manuscrits, d'index, d'enregistrements et de cartes. Pour la plupart, ceux-ci se rapportent à la situation canadienne; mais le Centre, désireux d'étoffer ses ressources, procède actuellement à l'acquisition de documents qui permettront d'établir la comparaison avec l'étranger, et notamment les États-Unis, l'Australie, la Nouvelle-Zélande et les pays scandinaves.

Guide pratique, la présente bibliographie signale une bonne partie des documents disponibles. L'exposé préliminaire qui l'accompagne cherche à donner au lecteur un aperçu de la nature des revendications indiennes au Canada et des tentatives qui ont été faites pour y satisfaire. L'exposé et la blibliographie ont été préparés par le Centre; ils ne sauraient de ce fait être considérés comme reflétant nécessairement le point de vue du Commissaire lui-même.

Créée à l'intention de ceux qui participent à l'élaboration des positions pour la négociation des revendications, la bibliothèque est située au cinquième étage de l'immeuble Kent-Albert (150, rue Kent) et est ouverte chaque jour de 9 h 30 à 12 h et de 13 h 30 à 16 h, du lundi au vendredi. Pour tout renseignement, écrire à: Boîte postale, 2520, Succursale D, Ottawa, K1P 5Y4; ou téléphoner au: 613-995-9585.

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INTRODUCTORY ESSAY

The native peoples of Canada have come under European influence in various ways, in differing degrees and at different historical periods. Little impact was made on the Arctic until this century and most of that has occurred since the Second World War. On the other hand, the Indians of the Atlantic coast and along the shores of the St. Lawrence encountered Europeans early in the sixteenth century. As a result of this contact, the Beothuk of Newfoundland were destroyed. Other Indians in the more southerly parts of the country have since largely moved towards a Euro-Canadian way of life. In northern areas, more continuity has been preserved with traditional patterns of living. Nowhere has native life been entirely unaffected by the advent of European settlers and their domination of territory that was once the exclusive domain of native peoples.

European-native interaction has taken many forms. The fur trade significantly altered the way of life of a large segment of the Indian population, economically as well as socially. While the fur trade introduced European goods and commercial values, it also brought with it white western moral and religious persuasions. At the same time, social interaction brought into being the people of mixed ancestry often referred to as Métis.

The later occupation of land for settlement was further instrumental in modifying the economic and socio-cultural bases of native societies. Resource exploitation in almost every part of the country additionally disturbed the lives of native peoples both directly, and indirectly through its environmental effects. Such activity continues today, with similarly disruptive results.

From an early period, the government of the colonizing society made itself specifically responsible for the relationship between the immigrants and the natives. At law, the native interest in land and other natural resources could not be acquired directly by the newcomers, but rather through the agency of their government. In addition, the government assumed much of the direction of native societies, particularly those whose traditional way of life was most disrupted. The historical relationship of the government to native groups accounts for their insistence on continuing special status as the original people of Canada. The Crown became the target of Indian grievances and claims respecting land, resources and the management of native affairs. These claims are based on aboriginal rights or on agreements made with government which were based on the Indians' position as unconquered indigenous occupants of the land.

To implement the policy of dealing with native peoples differently from other citizens, it became necessary to determine the membership of the native societies. Racial mixing and changing patterns of living have in many cases blurred the distinction between the original and immigrant peoples. The solution that has evolved is that people of Indian ancestry in Canada fall into two major classes in

their position vis-à-vis government. There are those recognized by the Canadian government as so-called status Indians, and a second group that includes those who are termed non-status Indians, and Métis. Status Indians are registered by the Department of Indian and Northern Affairs and possess certain rights and are subject to some limitations set forth in the Indian Act. That Act and its administrative interpretation determine what Indian status means, in practice, for the one-quarter million persons who hold it.

Non-status Indians are people of Indian extraction who for varying reasons were not registered as Indians by the department. Estimates of their numbers vary depending on the criteria applied; there are at least half a million. The category includes women who themselves or whose ancestors have lost Indian status through marriage. In addition, it encompasses those who voluntarily renounced their Indian status through what is called enfranchisement. One particularly large group without Indian status is the Métis, who form a distinct society with a group identity of their own.

Unless everyone with any Indian ancestry were to be accorded Indian status, a dividing line had to be adopted to encompass the group. Pre-Confederation Indian legislation set down loose definitions based on heredity and social factors, and these criteria were carried over into the Dominion's own early Indian legislation. In western Canada, inclusion in the treaties came to be the mark of status; hence status Indians there are frequently referred to as "treaty Indians". The list of registered Indians has been built up by ad hoc methods which often seem to have been quite arbitrary. It is for the persons and bands on this list only that the federal Department of Indian and Northern Affairs has accepted responsibility under the Indian Act.

Non-status Indians and Métis are recognized as holding a status no different from that of other Canadians. While the Government of Canada has assumed special responsibilities for education, health, welfare and economic development for status Indians, the non-status and Métis people rely on the same agencies as other Canadians for these services; this usually means the provincial governments. The British North America Act assigned to the Dominion Government responsibility for "Indians, and Lands reserved for the Indians" but gave no clearer specification of those terms. Non-status Indians and Métis argue that the government does not have the constitutional authority to limit these responsibilities by restricting the meaning of "Indian" only to those defined in the Indian Act. This question of status and membership in the status group is therefore an important element in the consideration of native claims and grievances.

The Inuit or Eskimos are a third group. Partly because of their location in the far hinterland of northern Canada, they were for long left with an ambiguous status outside these systems of administration. Some social services were provided by missionaries and traders, and through different levels and departments of government. The northerly extension of Quebec in 1912 was taken by the federal government to mean that the province became liable for its Inuit inhabitants. Meanwhile, serious deterioration of the Inuit economy was increasing the costs

of providing relief. The question of jurisdiction was resolved in 1939 when the Supreme Court of Canada declared the Inuit to be Indians for the purposes of the British North America Act. While they are therefore a federal responsibility, the Indian Act excludes them from its operation and they are dealt with separately by the government.

These, then, are the major groupings of native people, from a legal standpoint. Their claims are significantly influenced by these distinctions. There are three general categories of claims: aboriginal rights, treaty and scrip settlement grievances, and band claims. The notion of aboriginal rights underlies all other native claims in Canada. Native people claim that their rights to land derive from their original occupancy, and point out that aboriginal title has been recognized by the dominant society through various judicial decrees and actions of government. It is important to note that no treaties under which native people ceded their lands were ever made for about half the territory of Canada. On this basis, both status and non-status Indians, as well as the Inuit, are now developing or negotiating claims.

Treaty Indians have a number of claims that relate to the agreements for the cession of their lands through treaty. Some of these rest on an insistence that specific treaty terms have not been fulfilled, and that the broader spirit of the treaties has not been assumed by the government. A frequent claim is that verbal promises made at the time of the negotiations were not included in the written texts. In some areas, Indian people also emphasize in their treaty claims that these transactions constituted inadequate settlements, even if all their terms were fulfilled. These claims involve assertions about the way in which treaties were negotiated, the disparities between the two contracting parties and the alleged unfairness of the terms.

Most status Indians belong to bands, which possess rights to reserve lands held in common. There are approximately 550 Indian bands in Canada holding rights to 2,200 reserves. Most bands, whether in treaty or non-treaty areas, likely have specific claims to broach. The most numerous and widespread are those stemming from reserve land losses. Reserve lands were sometimes lost through squatting or re-surveys, though most typically as a result of formal surrenders and expropriations. Claims may be based on the specific nature and legality of these occurrences or on the general propriety of such forms of alienation. Management of band funds and reserve resources and the administration of band affairs, particularly with regard to economic development, are central features of many potential band claims.

As will be evident, land is an extremely important element of native claims in general. Native peoples are becoming more articulate about their unique relationship to the land both past and present, and about the meaning it has for them. At the same time, they are aware that the material standard of living that has been achieved generally in Canada derives ultimately from the land and its resources. As a consequence, they seek not only a role in determining the way in which the land and other resources are used, but also a just portion of the benefits derived from their exploitation. This theme is basic in the aboriginal rights claims, but it also

appears in treaty claims, where the original land agreements may be in question and in band claims concerning lost reserve land or other natural resources.

For the native people, trusteeship, a fundamental element in native claims, involves both protection and assistance. When the Government assumed political control over native people, undertook responsibilities for reserve land and band finances, and imposed special limitations on Indians as a feature of Indian status, it adopted a protective role over Indians and their affairs analogous to that of a guardian or trustee towards a ward or beneficiary. From this relationship flow grievances and claims which pertain to the Government's management of Indian resources.

I THE NATURE OF CLAIMS

Aboriginal Rights

The concept of native or aboriginal rights to land stems from a basic fact of Canadian history: that Indian and Inuit peoples were the original, sovereign inhabitants of this country prior to the arrival of the European colonial powers. The Indian understanding of the legal content of aboriginal title has been described in a statement tabled before the House of Commons' Standing Committee on Indian Affairs and Northern Development by the National Indian Brotherhood. It said,

> Indian title as defined by English law connotes rights as complete as that of a full owner of property with one major limitation. The tribe could not transfer its title; it could only agree to surrender or limit its right to use the land. English law describes Indian title as a right to use and exploit all the economic potential of the land and the waters adjacent thereto, including game, produce, minerals and all other natural resources, and water, riparian, foreshore, and off-shore rights.

While its content has never been clarified in Canadian law, aboriginal title has been referred to by the judiciary as "a personal and usufructuary right", or right of use and occupancy, "dependent upon the good will of the Sovereign".

The British colonists felt wholly justified in their encroachment on Indian lands because of their belief that their civilization, especially as it was manifested in powerful Christian states supported by sedentary agriculture and a developing technology, was inherently superior to native cultures based on hunting, fishing, gathering and sporadic horticulture. In their view, this superiority and its accompanying ideology unquestionably carried with it a right and a duty to prevail. But while denying native sovereignty or full land ownership, the British Crown came to acknowledge the existence of a certain native right to the land. While such recognition was not always honoured, it gained increasing legal force in colonial times: in the policy of treating with the Indians to acquire lands for settlement, in colonial statutes, in instructions transmitted to colonial governors, and eventually with full Imperial authority in the Royal Proclamation of 1763.

A most significant document in the controversy which has surrounded the notion of aboriginal title, this Proclamation delineated lands that were to be reserved to the Indians at that time. These consisted of land outside the Hudson's Bay Company's territory and the new colonies of Quebec East and West Florida, and west of the "Sources of the Rivers which fall into the Sea from the West and North West as aforesaid". Partly designed to cope with serious abuses which had sparked forceful Indian reaction, it included a general prohibition against purchasing "any Lands whatever, which, not having been ceded to or purchased by Us [The Crown] as aforesaid, are reserved to the said Indians, or any of them".

In order that Indian territory could be legally acquired in those areas in which settlement was to be encouraged, that is in Nova Scotia and old Quebec, the Proclamation outlined a policy under which such lands could be purchased at a public meeting of the Indians "to be held for that Purpose by the Governor or Commander in Chief of our colony respectively within which they shall lie . . .". Such a procedure underlay the pre-Confederation treaties made in Upper Canada, now southern Ontario.

Since Confederation, recognition of aboriginal title has been expressed in the major treaties, in which various Indian tribes agreed to "cede, release, surrender, and yield up" their interest in the land; and in a substantial number of government agreements, Orders in Council, policies, and legislation pertaining to land in general and to native peoples.

One important example of these was the transfer in 1870 of Rupert's Land and the North-Western Territory from the Crown to the Dominion of Canada. A schedule to the Orders in Council effecting this conveyance provided that Indian claims to compensation for lands required for settlement would be "considered and settled in conformity with the equitable principles that have uniformly governed the British Crown in its dealings with the aborigines". In 1875, the Canadian government exercised its right over provincial legislation by disallowing the British Columbia Crown Lands Act, because it failed to recognize Indian rights in the land. The 1912 Boundaries Extension Act, by which much of what is now northern Quebec was annexed to that province, provided that Quebec would recognize the Indians' territorial rights "to the same extent, and will obtain surrenders of such rights in the same manner, as the Government of Canada has heretofore recognized such rights and has obtained surrender thereof . . .". As a final example, the 1921 Order in Council authorizing the negotiation of Treaty No. 11 in the Northwest Territories stated that it was "advisable to follow the usual policy and obtain from the Indians cession of their aboriginal title . . .".

This traditional acceptance of the concept of aboriginal title has not, however, been consistently honoured or practised. The title has not been extinguished by treaty in large areas of Canada, including Quebec, most of British Columbia, the Yukon, the Inuit areas in the Northwest Territories, and the Maritime Provinces. In addition, extinguishment has been challenged in the Indian areas of the Northwest Territories. Native claims respecting their title have been formally

advanced for well over one hundred years in British Columbia, and subsequently in all the non-treaty areas. Although such claims differ in some respects from region to region, they basically take one of two forms. The first consists of a demand for formal legal recognition of a subsisting title and the rights that flow from it. The second is a demand for adequate, fair compensation for the loss or extinguishment of this title.

In the unsettled areas of northern Canada where the traditional pursuits of hunting, fishing and trapping persist, the Indian and Inuit proposals for claims settlement are more heavily oriented towards achieving the affirmation of aboriginal rights, in the belief that cultural integrity and development can best be maintained through active participation in the control of the development and use of northern lands. The President of the Indian Brotherhood of the Northwest Territories recently explained that his people

> . . . see a land settlement as the means by which to define the native community of interest in the north, and not to obscure it. This is why we stress . . . that formalization of our rights is our essential goal, rather than the extinguishment of those rights . . . .
>
> . . . Now we seek, through a land settlement, a resource base under our own control, which ensures our autonomy and our participation as equals in those decisions which affect our lives.

In contrast, in the southern, more populated areas of Canada where the land has become densely settled, aboriginal title claims place more emphasis on compensation for the extinguishment of the title, and the restitution of rights such as hunting and fishing, and exemption from taxation. In all of these areas, the native peoples view a possible settlement as a means by which they may develop and achieve control of their lives and communities.

Indian Treaties and Scrip Settlements

While the land rights of native peoples in Canada have by no means been treated uniformly, there did develop in British North America a consistent body of precedent and tradition which was utilized on new frontiers where fairly rapid settlement or resource exploitation was being promoted. This involved the making of treaties under which native peoples surrendered most of their territorial rights and gained various forms of compensation. Although numerous land surrender treaties had already been made in the Thirteen Colonies, it was not until after the American Revolution that the system was first systematically used in Canada.

Algonkian-speaking peoples formed the Indian population of southern Ontario when the European claim to territorial sovereignty passed from the French to the British in 1763. However, European settlement did not occur there to any degree until twenty years later. In these post-Revolutionary years, the separation of the Thirteen Colonies from British North America created an urgent need for land on which to settle disbanded soldiers and other Loyalists. The unsettled areas of British North America provided a ready solution to the problem.

About ten thousand United Empire Loyalists moved into the area of the St. Lawrence-lower Great Lakes. In presiding over this settlement, the Imperial Government did not simply grant land to these newcomers without regard for the Indian inhabitants. As has been seen, the Royal Proclamation of 1763 declared that Indian land rights could only be alienated at a public meeting or assembly of the Indians called for the purpose, and then only to the Crown. Although often honoured only in the breach, the Proclamation principles were respected in what became southern Ontario through a complicated series of formal treaties and surrenders.

To the government, these treaties were little more than territorial cessions in return for once-for-all grants, usually in goods, although there is contemporary evidence that some of the Indians involved considered that the government was assuming broader trusteeship responsibilities as part of the bargain. Annuities, or annual payments for the land rights ceded, appeared in a treaty in 1818, after which they became usual. At this stage, the provision of land for Indian reserves only occasionally formed part of the surrender terms. Similarly, the right to continue hunting and fishing over ceded territories was very rarely mentioned in the written terms of surrender. Not until 1850, when cessions of land rights were taken by William Robinson along the northern shores of Lakes Huron and Superior, were treaties made that granted to the Indians all four items: once-for-all expenditures, annuities, reserves and guarantees concerning hunting and fishing. It was for this reason that Alexander Morris, most widely known of the government's negotiators, wrote of them as constituting the "forerunners of the future treaties" to be made by the recently created Dominion.

The provisions of many of the southern Ontario treaties and surrenders are quite discordant with more recent agreements conveying far greater benefits to native peoples elsewhere. Most cessions made in Ontario after 1830 were concluded in trust. The government assumed responsibility for disposing of the ceded lands on the Indians' behalf, with the proceeds of sales usually going to the particular Indians involved. As with those made earlier, which were ofttimes outright surrenders with the government as purchaser, there are strong arguments that inadequate compensation was given. Surrenders concluded prior to 1818 provided for a lump sum payment along with a nominal yearly rent: in one 1816 surrender of Thurlow Township, for instance, the yearly rent was fixed at one peppercorn. In an 1836 surrender, it was considered sufficient to promise the Chippewa claimants vague agricultural and educational aid in exchange for their surrender of one and one-half million acres south of Owen Sound. The Robinson Huron and Superior Treaties, as well, supplied only minimal payments to the Indians, although they contained provisions for a limited augmentation of annuities in the future. One oversight in the former treaty presumably left aboriginal rights intact at Temagami.

Treaties Nos. 1 to 7 were made during the 1870's in the terrritory between the watershed west of Lake Superior and the Rocky Mountains in what was then Canada's newly acquired North-West. These treaties utilized many features of the earlier transactions, but were far more comprehensive in their provisions and more consistent and uniform with one another. Their characteristics and relative simi-

larities were not due to a broad policy worked out in advance by the federal government. Indeed, immediately before the first of these treaties was made, the Government had little information about the Indians of its new territory, let alone a policy. It proceeded to deal with the native occupants in an ad hoc fashion as necessity dictated. Almost inevitably the patterns of earlier Canadian experience were adapted to a new time and place. The seven treaties which emerged were partly shaped by the Indians themselves and were indirectly influenced by United States' practice.

The government's purpose in negotiating treaties in the North-West was to free land for settlement and development. A corollary of this was the urgent desire to satisfy the Indians sufficiently so that they would remain peaceful. The nature and extent of Indian rights to the territory were not discussed at the negotiations nor were they defined in the treaties themselves. It is evident from the texts, nevertheless, that the government intended that whatever title the Indians might possess should be extinguished, since the opening clauses of all seven agreements deal with land cession. This emphasis was not reflected in the preliminary treaty negotiations. There the stress was on what the Indians would receive rather than on what they were giving up. The Commissioners gave them assurances that the Queen understood their problems and was anxious to help them.

The loss of control over land use and the diminishing game supply threatened the traditional native way of life. While the Indians attempted to retain as much control as possible over their own territory and future, a secondary desire was the attempt to gain sufficient compensation and support to ensure their survival amidst rapidly changing conditions. As a result of hard bargaining, Indians did manage to have some additional provisions included in the treaties beyond those the government had originally intended. These included agricultural aid and certain liberties to hunt and fish.

Indians today make several points in relation to these treaties. The major one is that the treaty texts do not reflect the thrust of the verbal promises made during the negotiations and accepted by a people accustomed to an oral tradition. They state that their ancestors understood the treaties to be specifically designed to protect them and help them adapt to the new realities and develop an alternative agricultural base to complement their traditional livelihood of hunting and fishing.

Indian associations strongly deny that the treaties obligate the government only to fulfil their terms as they appear in the bare texts. They uniformly insist that the written versions must be taken together with the words spoken by the government's agents during the negotiations. In a submission to the Commissioner on Indian Claims, the Federation of Saskatchewan Indians states that:

> In his various addresses to Chiefs and Headmen at treaty meetings, Commissioner Morris had a single message for the Indians: The Queen was not approaching the Indians to barter for their lands, but to help them, to alleviate their distress and assist them in obtaining security for the future. "We are not here as traders, I do not come as to buy or sell horses or goods, I come to you, children of the Queen, to try to help you. The Queen knows

> that you are poor; the Queen knows that it is hard to find food for yourselves and children; she knows that the winters are cold, and you[r] children are often hungry; she has always cared for her red children as much as for her white. Out of her generous heart and liberal hand she wants to do something for you . . . ."
>
> These verbal assurances and statements of Crown intent, and the many others like them, given by Morris in his address to Chiefs and Headmen, cannot be separated from Treaty documents because they were accepted as truth by the assembled Indians.

The nature and extent of the implementation of the treaty provisions are another source of grievance in this area. The government's open policy of detribalization, which held as its goal the assimilation of Indian people into the dominant society, motivated a number of specific policies which were destructive of Indian efforts to develop within the context of their own cultures. The field of education is one of the most conspicuous examples of this process, as it is easy to appreciate the effects of isolating children in residential schools where they were taught that their parents' language and culture were inferior, and had instilled in them a set of alien customs and values.

In the Indian view, during the late nineteenth and early twentieth centuries, the government failed to provide the expected agricultural assistance, and unduly restricted Indian agricultural development. It encouraged the surrender of some of the best agricultural land from the reserves when its efforts failed to turn the Indians into farmers.

All of the Prairie native organizations, along with the Grand Council of Treaty No. 3 in northern Ontario, share the view of the desirability of rewording the treaties in terms that will embody their original spirit and intent. As in aboriginal title areas, the results of such settlements could, they say, provide the basis for revolutionizing the future development of Indian peoples and reserves on native terms. The treaty Indians' organizations have outlined some specific objectives and proposals for an approach to development. A primary characteristic of these is their rejection of the concept of assimilation or detribalization, and stemming from this the conviction that the Indian people must initiate and control the development effort themselves.

Only at the turn of the century, when mineral exploitation provided the impetus, were treaties made to the north of the areas surrendered during the 1870's. Treaty No. 8 was concluded in the Athabaska District, Treaty No. 9 in northern Ontario and Treaty No. 10 in northern Saskatchewan. In addition, adhesions to Treaty No. 5 were taken in northern Manitoba to extend the limit of ceded territory to the northern boundary of the province. Finally, in 1921, following the discovery of oil at Norman Wells, Treaty No. 11 was made in the Northwest Territories.

A major question has arisen respecting Treaties Nos. 8 and 11 as to whether the agreements involved the cession of native land rights, since both the oral testimony from surviving native people who were present and the reports of those discussions which took place at the treaty-making raise substantial questions

about this. The address of the Treaty No. 8 Commissioner at Lesser Slave Lake in 1899 dealt only with what the Indians would receive; there is no reference in the extant text to ceding territory, and as with Treaty No. 11 there is little evidence that the native people were aware that land cession was involved. Nevertheless, the Commissioners made it clear that the country would be opened up for settlement and development. The Indians understood that they were not to interfere with those coming into the country for lawful purposes; in return, they sought protection for themselves in their hunting, trapping and fishing way of life.

The treaty terms were modelled closely on those of the Prairie and Parkland treaties. The provisions for reserves of land and for agricultural aid which were suited to southern conditions were applied in the North where much of the territory was not suitable for agriculture. The Indians at Fort Chipewyan reportedly refused to be treated like Prairie Indians and to be placed on reserves, since it was essential to them to retain freedom to move around. Why then did the Indians sign the treaties? Testimony from those present at the negotiations indicates that they were given ample assurances that they would not be adversely affected by accepting treaty. They would neither be confined to reserves nor lose their hunting, trapping and fishing rights.

In addition to those native people whom the federal government was prepared to recognize as Indians having an aboriginal right in the soil, there was also in the western interior of Canada a large population of Métis. For the most part, they considered themselves a group separate from both Indians and Europeans. Despite this, they regarded themselves as natives of the country and entitled, like the Indians, to some special consideration. When it appeared that they were being ignored, they forced themselves on the attention of the government in 1869-70 by denying entrance into the Red River Settlement of the Canadian appointee sent to govern the territory.

Métis had never before been dealt with as a group. Nevertheless, in 1870 the Dominion Parliament passed the Manitoba Act which, among other things, made provision for a distribution of land to the children of Métis heads of families in Manitoba. The Act accorded statutory recognition to the Métis' aboriginal title. Subsequently the heads of families themselves were included in the grant, and they were each to be given a 160-acre parcel of land, to be chosen in any section open to colonization. Alternatively, they were entitled to a negotiable certificate (scrip) enabling them to acquire such an area, an arrangement which played into the hands of speculators.

The Métis people of the North-West outside Manitoba were not included in these grants. While the treaties were being made with the Indians of the North-West in the 1870's, almost nothing was done to settle the Métis' claim. The Dominion Lands Act of 1879 enabled land grants to be made to Métis in the then North-West Territories, but this statutory provision was not acted upon until early in 1885 when an Indian and Métis rebellion was anticipated. The Street Commission appointed then to screen Métis applicants for scrip was intended to be an instrument of pacification as had been the Manitoba Act fifteen years earlier.

Eventually, the Métis' claim was met through an issue of scrip throughout the region where Indian title had previously been extinguished by treaty.

The different methods adopted for dealing with Indians and Métis, which had been first applied in Manitoba, were in this way extended further into the western interior. In 1899, they were extended into the north; two commissions were appointed to deal with the Indians and the Métis respectively within the Treaty No. 8 area. The same principle was followed for Treaties Nos. 10 and 11, except that the Indian treaty negotiators then acted simultaneously as scrip commissioners for the Métis.

The Métis' claims rest upon the same general foundation as those of persons deemed to have Indian status, that is upon an aboriginal right to territory. Métis were admitted into Indian treaties in western Canada only as an exception to a general rule. Such admission applied only to those most closely identified with the Indians, although some element of choice was permitted. The Indian Act of 1876 specifically excluded them, barring exceptional circumstances, while later amendments provided for their withdrawal.

The Manitoba Act had pointed the way to the policy to be adopted for extinguishment of Métis rights, and this differed significantly from that employed for Indians. It was not negotiated, but was unilateral, proceeding by legislation and Orders in Council. Furthermore, while the Métis were treated as persons having aboriginal title, and therefore different from other Canadians, it has never been government policy to create and maintain them as a category of persons with special status like the Indians. The Dominion assumed no unique, continuing responsibility towards the Métis and non-status Indians as part of its constitutional jurisdiction over Indians.

Métis claims are likely to fall into three categories. There will be claims that the distribution of land and scrip, especially under the Manitoba Act, was unjustly and inefficiently administered. As well, there may be a general claim that this form of compensation was inadequate to extinguish the aboriginal title enjoyed by the Métis community, particularly since few of them gained very much from scrip. This argument would be similar to that made by some treaty groups that the treaties constituted an imposed settlement and that they were unfair by reason of insufficient compensation. This type of claim may be reinforced by the fact that people of mixed blood have generally received no compensation beyond the western interior of Canada but are making claims jointly with status Indians in several regions of Canada such as British Columbia and the Yukon Territory. This situation helps to support the third type of claim, that Métis are Indians under the terms of the British North America Act, if not under those of the Indian Act, and are entitled to special consideration from the federal government.

Band Claims

The third major class of claims encompasses the multifarious, scattered claims of individual Indian bands. Several categories of these can be identified at present, and include claims relating to the loss of land and other natural resources

from established reserves, and issues pertaining to the government's stewardship of bands' financial assets over the years. Underlying all these claims is the difficult question of trusteeship.

The full story of the government's management of reserve resources and band funds across Canada is only gradually being pieced together from the files of the department, missionaries and others, and from the oral testimony of Indian people themselves. The resources include not only land itself but also minerals, timber, grazing lands and water. Band funds in most cases derive from land and other resource sales. Where land was surrendered and sold off from reserves, the capital went into band funds, to be administered by the federal government.

Land losses from established Indian reserves account for by far the majority of band claims so far brought forward. Groups of them are probably sufficiently similar to be classified on a regional and historical basis. Grievances arising in New France have certain elements in common, as do Indian claims in the Maritimes, in Ontario, in the southern Prairies, and in British Columbia. The problem of pressure for reserve land acquisition by speculators and settlers is central to all.

The French, who were the first European power to control the northern half of North America, were the first to establish any sort of Canadian Indian policy. Their approach was pieced together as geographical distance from the mother country, overwhelming native military strength, a fur trade economy, and negligible settlement dictated. They sought, if unsuccessfully, the Indians' assimilation into French-Canadian society and saw the converted natives as equal in civil and legal status to France's European subjects.

There are conflicting interpretations as to whether Indian territorial rights were affirmed or extinguished under the French régime; treaties were never concluded for territory either in New France or in Acadia. As to white colonists, so to Indians, land was given through imperial grace. However, the Crown, instead of granting such tracts directly to the native people, handed them in trust to the most efficient civilizing and Christianizing agencies then known, the religious orders. Six Indian reserves were formed in this manner.

With the British takeover in 1760, France's Indian allies were secured in the use of their lands. In 1851, 230,000 acres were set aside as Indian reserves and a further 330,000 acres were similarly appropriated by the Quebec Lands and Forests Act of 1922. Additional reserves were created through the transfer of land from the provincial to the federal government by letters patent issued by Quebec, through direct purchase by the Dominion from a private party, or through private leases.

The native peoples of Quebec have, over the years, sought increased compensation for land lost from these reserves; settlement of disputes between bands and tribes over reserve ownership; restitution for damages done through logging, fishing and canal construction; and compensation for questionable band fund management. The existence of these grievances suggests a basic difference in

view between the Indians and the federal government, which has historically tended to judge the issues solely on their legal merits as seen by the Department of Justice.

In the nineteenth century, for instance, the complaints of the Hurons of Lorette and the Montagnais of Pointe-Bleue against white squatters went unnoticed; charges that the municipality near the Iroquois Oka reserve had unjustly taken over land to allow for the construction of three roads were only briefly considered, as was the Caughnawaga claim for land sold as a clergy reserve. The St. Regis Iroquois' protests against the Quebec government's unilateral renewal of leases to, and sale of, islands in the St. Lawrence, along with their claim to compensation for the flooding of additional islands by the Cornwall Canal, were to no avail. Dozens of claims to islands, first voiced in the eighteenth and nineteenth centuries, remain unsettled, and many of the current disputes over expropriation, whether by settlers, clergy or the Crown, go back to these earlier years. At the root of much of this lack of responsiveness is the government's and the courts' persistent denial of the Indians' contention that they owned the land initially granted to the religious orders, on the grounds that title thereto had been given direcly to those orders, and not to the Indians themselves.

The arrival of the British in New France, so far as the Indian people were concerned, did not favourably alter the natives' condition. The same could be said for the Maritimes. As British settlement and power increased, large tracts were set apart for Indian use and occupation. Although these lands were called Indian reserves, they were not guaranteed to the Indians through treaties, and were subsequently reduced as the land was required for settlement. Further pressures on these reserves in the Maritimes in the early nineteenth century, coupled with problems in dealing with flagrant non-native squatting, motivated the colonial governments to appoint commissioners to deal with and supervise reserves. These officers apparently had and certainly exercised the right to sell reserve lands without Indian consent. With Confederation, the existing reserves were transferred to the jurisdiction of the federal government, though for a long time the underlying title lay with the respective provinces.

Claims have been presented to the federal government for past reserve land losses. Within this category, several main types of claims are emerging. A large number contest the legality or status of surrenders of reserve lands. These include submissions on surrenders processed without proper Indian consent, uncompleted sales of surrendered land, sale of lands prior to their being surrendered, lack of letters patent for completed sales, and forged Indian signatures or identifying marks on surrenders. In Nova Scotia, a general claim has also been presented contesting the legality of all land surrenders between 1867 and 1960. This is based on the argument that the Micmac Indians of that province constituted one band and that under the Indian Acts of the period surrenders could only be obtained at a meeting of a majority of all band members of the requisite sex and age. Another group of Maritime band claims against the federal government arises from the contention that a number of reserves transferred to the federal government after Confederation were subsequently listed or surveyed by the

Department of Indian Affairs as containing smaller areas than the original acreages listed, or were simply never surveyed and registered as reserves at all.

There are also Maritime Indian claims against the federal government relating to the latter's trusteeship role. The Union of Nova Scotia Indians has put forth a number of claims concerning mismanagement by the government of its obligation to ensure adequate and proper compensation for reserve lands surrendered or expropriated for highway rights-of-way, utility easements, and other public purposes.

The sources of Indian claims in southern Ontario are similar to those in Quebec and the Maritimes. Probably the bulk of them have not yet been disclosed: at any rate, no formal comprehensive claims statement has emerged. In common with Quebec, though, past cases of recorded claims for such losses abound. Some have been rejected by the Departments of Indian Affairs and Justice, or by the courts; many, however, lie dormant. It would not be unreasonable to expect these, and new contentions based on them, to be advanced in greater numbers in the near future.

Indian people have claimed that both cessions concluded under unjust circumstances and legally questionable government expropriations of reserved lands were common. Government initiatives, along with pressure from white speculators and settlers, were, as usual, dominant factors. The Six Nations' Grand River surrender in 1841, the Mohawks' cession of Tyendinaga Township in 1843, the Moore Township surrender made by the Chippewa later that year, and the 1847 cession by the St. Regis Iroquois of Glengarry County, are prime examples of contentions that surrenders were attained under pressure. All these were ceded in trust, although there is evidence that the trust provisions were not always upheld. Similar grievances pertain to the government's acquisition of unceded islands. Equally familiar was the variety of expropriation which allowed the sale of individual lots from Indian reserves for clergy and state purposes. Disputes over the status of territory, too, were prevalent. These were generally related to squatter infiltration and occasionally extended into inter-tribal conflicts for reserved lands and, accordingly, for annuities.

The social and economic factors underlying the loss of Indian reserve lands in central and eastern Canada soon found expression on the Prairies. In the years following the making of the treaties and the setting aside of the reserves, the southern prairies were gradually settled. Towns and cities sometimes grew on the very edges of reserves or even around them, and railways ran through them or along their boundaries. As in Ontario, so on the Prairies, reserves located on good farming land were coveted by settlers. For all these reasons, political pressure frequently developed for the surrender of all or a portion of a reserve. In many cases the Indian Department responded by obtaining a surrender of the reserve land in question; proceeds from the sales of such land were credited to the particular band's fund, and administered under the terms of the Indian Act.

In recent years, the bands and Indian associations of the Prairies have clearly articulated several claims arising from previous government policies in relation to

land surrenders. At present, they are examining both the justification for these surrenders in general, and the legality and propriety of specific cessions, such as those involving Enoch's Band, near Edmonton. Three surrenders took place. The entire Passpasschase Reserve was ceded shortly after most of the band members left treaty and took Métis scrip. The remaining members moved elsewhere, and subsequently the band and its assets were amalgamated with Enoch's Band, residing on the Stony Plain Reserve. In 1902 and 1908, political forces largely supported, if not generated, by the Minister responsible for Indian Affairs himself, compelled the surrender of portions of this reserve. In taking the surrenders, government officials used approaches which appear to have been morally and legally dubious. Such questions surround many other surrenders in the Prairie region and northern Ontario.

At the heart of many Indian grievances in the northern Prairie Provinces is the issue of unfulfilled treaty entitlements to land. Complex in themselves, such claims have been further complicated at the outset by the need for provincial assent to any proposed transfer of lands to Indian Reserve status. Under the 1930 Natural Resources Transfer Agreements, the three Prairie Provinces obliged themselves to transfer to the federal government, out of unoccupied Crown lands, sufficient area to meet unfulfilled treaty obligations. Native people have felt that there has been provincial reluctance to comply with this and disputes have arisen over the exact nature of the commitments. The Island Lake bands in Manitoba, for instance, have raised the matter of what population base should be utilized in the granting of unfulfilled treaty entitlements. A substantial proportion of the bands' allotments under Treaty No. 5 were made in 1924, but the land assigned was approximately 3,000 acres short, if based on the populations at that date and on the treaty terms. The bands maintain that their total entitlement should be computed using a recent population total, with the 1924 allotment simply subtracted from the new allocation.

In addition, this case points to the inequality amongst the various treaties' land provisions throughout the West. In common with other treaties in Manitoba, Treaty No. 5 provides for 160 acres per family of five, compared with the 640-acre figure used for other treaties. Since the land in this region of Canada is non-arable, an additional inequity is present relative to more southerly, fertile regions. The bands contend that a fair solution, satisfying the twin criteria of population datum and uniform treaty terms, would be an allocation of almost 300,000 acres.

In British Columbia, the history of Indian reserves is substantially different from that elsewhere. During the 1850's, when Vancouver Island was still provisionally governed by the Hudson's Bay Company, certain minor surrenders were concluded by the Company's Chief Factor, James Douglas, for several parcels of land there. But these, along with the territory in the northeastern corner of the mainland included in Treaty No. 8, are the only areas covered by treaty. The dual governorship of the two colonies — Vancouver Island and British Columbia — under Douglas in 1858 was soon accompanied by the establishment of comparatively liberal reserves both within and outside the treaty areas. But then, expanding

white settlement motivated Douglas' successors to reverse his policy of allowing the tribes as much land as the Indians themselves judged necessary, and accordingly to reduce the reserves wherever possible. Only with great reluctance did the colonial government allot new reserves in areas opening to settlement.

By 1871, when the colony entered Confederation, Indian complaints concerning the failure to allot adequate reserves and reserve land reductions were already numerous. Yet, the Terms of Union that year did nothing to allay these grievances. Fundamentally, the Terms provided for the transfer of responsibility for reserves to the Dominion Government, and for the conveyance of land from the province to the Dominion for new reserves. As no amounts were agreed upon, a dispute immediately arose between the two over the appropriate acreage to be allotted per family. The province declared ten acres sufficient; the federal government proposed eighty. An agreement establishing an Indian Reserve Commission was concluded in 1875 to review the matter, but there continued to be provincial resistance against attempts to liberalize reserve allotments.

This is one source of Indian claims in British Columbia. A recent report by the Union of British Columbia Indian Chiefs, entitled *The Lands We Lost,* details others. This includes the by now familiar pattern of encroachment by non-Indian people, together with questions about various government surveys and Commissions, federal Orders in Council, and reserve land surrenders. A prime cause of such losses, and the major grievance expressed in this regard, was the work of the federal-provincial McKenna-McBride Commission, set up in 1912 to resolve the outstanding differences between the two governments respecting Indian land in British Columbia. The Commissioners were appointed to determine the land needs of the Indians and to recommend appropriate alterations to the boundaries of Indian reserves. All reductions were to require the consent of the bands involved, but in practice this stipulation was not followed. The recommendations were subsequently ratified by both governments under legislation which authorized these reductions irrespective of the provisions of the Indian Act controlling the surrender of reserve lands. Eventually, some thirty-five cut-offs, aggregating 36,000 acres, were made, while lands of far less value, although of larger area, were added to reserves.

II DEALING WITH NATIVE CLAIMS

Courts and Claims Commissions

Only occasionally have the courts in Canada been asked to adjudicate issues concerning the rights of Indian people. Although there are exceptions, in general the judicial system has not responded positively or adequately to native claims issues. Respecting aboriginal rights, the judiciary decreed that any European colonial power, simply by landing on and laying claim to lands previously undiscovered by white European society, became automatically the sovereign of this

"newly discovered" land. Occupation was taken to confirm that right. Rather than obligations which came with the assumption of sovereignty, native rights were conceived as matters of prerogative grace by both government and courts.

Indian people have faced clear social and cultural obstacles in becoming litigants in a legal system largely foreign to their experience. And even if some might have considered taking action through this forum, they had until very recently little or no capacity to pay the necessary legal fees. As a result, most of the early but significant decisions in the area of fundamental Indian rights have been handed down in cases where the Indian people affected were not directly represented. Many of these cases involved disputes between the federal and provincial governments over questions of land and resources. Indian rights became material to the cases only because the federal government sought to rely upon them to reinforce its own position by citing its exclusive constitutional responsibility for Indian people and lands.

What was, until very recently, the only significant case on the question of aboriginal title in Canada was decided by the Judicial Committee of the Privy Council in 1888. This, the *St. Catherine's Milling* case, involved litigation between the federal government and the Province of Ontario over the question of whether the former could issue a timber licence covering lands eventually declared to lie within Ontario. The Indians themselves were not represented. The federal government, for its part, argued that it had properly acquired the title to the land from the Indian people; the Judicial Committee of the Privy Council denied that native people, at any time, had "ownership" of their land in the sense that Europeans understood the term, and stated " . . . that the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign". The Law Lords went on to say that the effect of signing treaties with Indian people was to extinguish this "personal and usufructuary right", and to transfer all beneficial interest in the land covered by the treaty immediately to the Province. Nearly a century was to pass before the nature of aboriginal title would receive further consideration by Canada's highest court of appeal.

The courts have also rendered judgments on the nature and effect of the treaties. At least three possible interpretations of the Indian treaties have been put forward. Some have been regarded as transactions between separate and independent nations. Such has been the traditional claim of many Six Nations Indians. Secondly, they have been characterized as special protective agreements in which Indian peoples surrendered their rights to land in return for irrevocable rights conferred upon them by the Government. Thirdly, they might be interpreted as according the Indians no rights "beyond a promise and agreement" analogous to any commercial contract made at the time with the government. A judgment written by the Judicial Committee in 1897 opted for this last interpretation in a dispute amongst the Attorneys-General of Canada, Ontario and Quebec. Indian people have thus found themselves constrained by adverse precedent before they had begun to make their own arguments in court.

In addition to the rights at stake in this case, the courts have also dealt with the promise of continued hunting and fishing rights. Their decisions have affirmed the federal government's right to break express promises made by treaty. However, on occasion the judiciary has questioned the morality of such legislative action. Many of the most fundamental treaty promises regarding social and economic development have not yet reached the courts. It would require a radical departure from established precedent for the courts to accord such obligations the character understood by the Indians.

Cases touching the many reserve land loss grievances have on occasion come before the courts. Little can be learned about the direction which the courts might take in future land loss claims from a reading of these judgments, as they disclose no clear pattern of judicial thought. Decisions on claims concerning the mishandling of Indian monies have been equally rare and uninstructive. The fundamental question of the relationship between the federal government and Indian people in the areas of management of land and monies remains legally undefined. Indian people regard this relationship as one of trust and the federal government has often referred to it in these terms. This fiduciary obligation places a very heavy burden on the federal government to act in good faith and always to consider the best interests of Indian people to be of paramount concern.

As an avenue for Canadian Indian claims, the legal system could only have been seen in native eyes as an incomprehensible gamble. Only in recent years have the courts responded more favourably to Indian claims, not in the sense of fully and satisfactorily resolving them, but rather in providing a basis from which Indian people might negotiate with government.

The first Canadian attempt to hear and settle Indian claims outside the courts came with the establishment by parallel legislation, in 1890-91, of a three-man Board of Arbitrators. Appointed to inquire into disputes between the Dominion and the provinces of Ontario and Quebec, the Board, with one federal and two provincial members, considered respective federal-provincial responsibilities in the area of Indian affairs. Claims were presented by the Department of Indian Affairs on behalf of the Indians. It generally stated that the satisfaction of native grievances was the obligation of the old Province of Canada before 1867, and of Ontario and Quebec thereafter. The provinces countered that such obligations rested solely with the Crown in right of the Dominion.

In all, some twenty cases were placed before the Board, which was heavily dependent on the opinions of the governments' legal and administrative officers. This system proved unsatisfactory, since the claims became embedded in federal-provincial conflicts. The Board itself had no final adjudicatory power, and by the early 1900's had waned into insignificance. With few exceptions, the Indians derived no benefit from its activities.

Realization on the part of both native and non-native people in the United States that the ordinary courts were unsuitable forums for the presentation and resolution of Indian grievances and claims brought forward a response that

was increasingly to preoccupy Canadian governmental and native thought. Efforts which began in the 1930's in the United States to establish a special adjudicatory body with powers to hear and determine Indian claims culminated in 1946 with the creation of an Indian Claims Commission. In Canada, the Joint Committees of the Senate and House of Commons on the Indian Act and on Indian Affairs, which sat in 1946-48 and 1959-61 respectively, recommended establishing a similar, though more limited, body. As a result, enabling legislation received first reading in the Commons in December 1963, and the draft bill was sent to Indian organizations, band councils and other interested groups for comment; a slightly amended version of the proposal was introduced in June 1965.

The terms of the bill provided for a five-person Indian Claims Commission, one member of which was to be an Indian, with a chairman who was a judge or lawyer of at least ten years' standing. The jurisdiction of the commission would have been limited to acts or omissions of the Crown in right of Canada or of the United Kingdom, but not in right of a province. Because of this and stipulations about evidence, there was substantial doubt as to whether it would have been able to decide on the merits of the aboriginal title issue in British Columbia, a claim which comprised one of the main rationales for the creation of the body.

The suggested Canadian commission would have lacked jurisdiction to hear classes of cases which, in the United States, formed the bulk of those heard. These included claims for the Government's failure to act "fairly or honourably" where land was involved, as well as others requiring that treaties be re-opened on grounds such as unconscionable consideration. The Canadian legislation would have permitted the commission to consider only failure to fulfil treaty provisions, not the general question of re-opening treaties. The bill also ignored the Indian organizations which were emerging as a force at that time. Instead, the proposed commission was to be authorized to hear claims on behalf of bands, as defined by the Indian Act; regional Indian organizations, however, might not have been recognized as claimants. Further, the commission would have been given authority only to make money awards, not to restore land.

Because of these and other inadequacies, this proposal for an adjudicatory commission met with Indian opposition. On second reading, it was referred to a Joint Committee of both Houses of Parliament, but was allowed to die following the dissolution of Parliament later in 1965. Nothing further was done towards establishing a commission, although the Government's intention to do so appeared to be unchanged. In September 1968, the Minister of Indian Affairs stated that he proposed to introduce a bill "in the weeks to come" to establish an Indian Claims Commission, and he reaffirmed this intention the following December. On this occasion, though, he remarked that the bill had been referred for amendment to the Cabinet Committee on Health, Welfare and Social Affairs. This appears to have been the Government's last public discussion of the projected commission before the announcement of a new Indian policy in June 1969. This demise was attributed to consultations with Indian representatives and the review of Indian policy which had preceded the drafting of the new White Paper.

The White Paper and The Indian Claims Commissioner

The first of a series of contemporary responses to Indian claims started with the 1969 White Paper on Indian Policy. That event marked the beginning of a new era of unprecedented claims activity. The Government proposed an approach which it said would lead to equality of opportunity. This was described as " . . . an equality which preserves and enriches Indian identity and distinction; an equality which stresses Indian participation in its creation and which manifests itself in all aspects of Indian life". To this end, the British North America Act would be amended to terminate the legal distinction between Indians and other Canadians, the Indian Act would be repealed, and Indians would gradually take control of their lands. The operations of the Indian Affairs Branch would be discontinued and services which had previously been provided on a special basis would be taken over by the federal or provincial agencies which serve other Canadians. Economic development funds would be provided as an interim measure. In short, Indians would come to be treated like all other Canadians: special status would cease.

In laying out these proposals, the Government continued to recognize the existence of Indian claims, and proposed the establishment of an Indian Claims Commission, but solely as an advisory body. It was made clear that the Government was not prepared to accept aboriginal rights claims: "These", the Paper said, "are so general and undefined that it is not realistic to think of them as specific claims capable of remedy except through a policy and program that will end injustice to Indians as members of the Canadian community. This is the policy that the Government is proposing for discussion." Treaty claims, while acknowledged, were also placed in a dubious light: "The terms and effects of the treaties between Indian people and the Government are widely misunderstood. A plain reading of the words used in the treaties reveals the limited and minimal promises which were included in them. . . . The significance of the treaties in meeting the economic, educational, health and welfare needs of the Indian people has always been limited and will continue to decline. . . . [O]nce Indian lands are securely within Indian control, the anomaly of treaties between groups within society and the government of that society will require that these treaties be reviewed to see how they can be equitably ended." The Government apparently felt that while the central aboriginal and treaty claims had little virtue, and were directly at odds with the proposed policy, there were instances where claims might be accepted. Lawful obligations would be recognized.

Rather than proceeding with the kind of commission discussed in the 1960's, it was decided that further study and research were required by both the Indians and the Government. Accordingly, the present form of commission was established under the Public Inquiries Act to consult with the Indian people and to inquire into claims arising out of treaties, formal agreements and legislation. The Commissioner would then indicate to the Government what classes of claims were judged worthy of special treatment, and recommend means for their resolution.

Given the nature of Indian views on their rights and claims as we now understand them, it is not surprising that their reaction to the White Paper was

strongly negative. The National Indian Brotherhood immediately issued a statement declaring that, " . . . the policy proposals put forward by the Minister of Indian Affairs are not acceptable to the Indian people of Canada . . . We view this as a policy designed to divest us of our aboriginal, residual and statutory rights. If we accept this policy, and in the process lose our rights and our lands, we become willing partners in cultural genocide. This we cannot do."

In the following months, native groups across the country forcefully and repeatedly echoed this response. When the Commissioner, Dr. Lloyd Barber, was appointed in December 1969, the National Indian Brotherhood rejected his office as an outgrowth of the unacceptable White Paper, viewing it as an attempt to force the policy on native people. Indians saw the White Paper as the new articulation of a long-resisted policy of assimilation. The proposal was denounced as a powerful, threatening extension of traditional Indian policy in Canada.

In rallying to oppose this apparent challenge to their rights, the native peoples have in turn produced extensive statements of their own positions. While difficulties were encountered in arranging for research funding, sufficient government monies were made available to finance some of this work. The resulting statements, together with concerted legal and political action on the part of Indians, have led to significant changes in the Government's approach.

An early response occurred in August 1971, when in reply to submissions from the Commissioner and Indian leaders, the Prime Minister agreed that the former would not be exceeding his terms of reference if he were to "hear such arguments as the Indians may wish to bring forward on these matters in order that the government may consider whether there is any course that should be adopted or any procedure suggested that was not considered previously". The Commissioner took this to mean that he was free to look at all types of grievances and claims, including aboriginal rights issues.

In August 1973, the Government made a substantial change in its position on aboriginal rights by announcing that it was prepared to negotiate settlements in many areas where these had not been dealt with. Then, in April 1975, on the basis of proposals developed through consultations between Indian leaders and the Commissioner, the Government accepted an approach to the resolution of Indian claims based upon negotiations.

Aboriginal Rights

In the non-treaty areas of Canada, criticisms of the White Paper centred around the proposed transfer of responsibility for Indian Affairs from federal to provincial authority and the Paper's refusal to recognize or deal with aboriginal rights claims. The Union of New Brunswick Indians, for example, announced its complete rejection of the policy, and the Indians of Quebec stated through their Association that they would have nothing to do with its implementation until a treaty had been concluded with them. Then, in September 1971, Indian representatives from across Canada completed their succinct position paper on "the

territorial aspects of Indian claims based on aboriginal title". This statement was later supported by a Parliamentary Standing Committee during the life of a minority government, but never brought to a vote in the Commons.

In July 1972, a substantial answer to the Government's denial of aboriginal rights claims was presented in the *Claim Based on Native Title* by the Union of British Columbia Indian Chiefs. The Union asked the Prime Minister and the Government of Canada

> . . . to realize what a shock it was to the Indians, especially of British Columbia, to be told in 1969 that grievances relating to claims based on native (aboriginal) title to land 'are so general and undefined that it is not realistic to think of them as specific claims capable of remedy' except through the new policy then proposed — a policy which, if unaltered, totally rejects that historic claim. For the Indians of British Columbia, sometimes as individuals, sometimes as organized groups, have for generations maintained a claim for compensation, adjustment or restitution based on denial, without their consent and without compensation, of their ancient rights to use and enjoy the land that was theirs.

The submission declared that the native people must be compensated for the loss of their rights to the land throughout the whole of British Columbia, including the loss of surface, subsurface, riparian and foreshore rights. This claim was based squarely on the doctrine of aboriginal title, and contains lengthy arguments supporting the validity of the concept. In doing so it distinguished between a claim to present title, as was being asserted in the courts by some British Columbia Indians, and its own contention that the Indians had aboriginal title prior to the coming of non-Indian settlers, but are now largely denied the rights of occupancy and use which that title carries with it. Except for hunting and fishing rights, the claim is primarily for compensation, not restitution.

The Union did not consider the courts an acceptable means of achieving settlement, and declared that only the Government and Parliament, whether through an overall legislative settlement or an adjudicatory commission, could effectively deal with the issues. Either method would have been acceptable, though on balance at that time the Union favoured the second. Since then an approach through direct negotiation has gained acceptance. The adjudicatory commission's function would have been to determine the amount of compensation due various claims. The claim to aboriginal title would have been recognized in legislation constituting the commission, which would avoid the time-consuming process of each group of Indians having to establish the fact and extent of its title. The objective would be to determine the possibility of restitution, especially in questions of hunting and fishing and riparian or foreshore rights, and, in most cases, the amount of compensation for loss of rights.

The value of the land was to be assessed at the time the Indians lost the use of it: the date of the treaty in the British Columbia treaty areas, and the date of establishment of reserves elsewhere. This amount would be converted to a present dollar equivalent and compensation paid at five per cent simple annual interest. The resulting fund would be administered by a province-wide development corporation owned and managed by Indian people. This proposal, its authors

believed, would not only settle the grievances of the past, but would lay a foundation for the social and economic development of the Indian communities of the province.

Well before this statement of the British Columbia land claim was presented, the Nishga Indians of the northwestern part of the province had begun their search through the courts for a judicial declaration that their aboriginal title had never been surrendered by treaty or otherwise extinguished. The case, *Calder v. Attorney-General of British Columbia*, was first heard in the British Columbia Supreme Court in 1969. Dismissed by that court, it was appealed to the British Columbia Court of Appeal where it was again dismissed. Finally, it was taken to the Supreme Court of Canada where, in January 1973, seven judges divided four to three against the Nishga claim. Six of the bench supported the notion of an aboriginal title "dependent upon the good will of the Sovereign", but there was no agreement on the fundamental questions of how such rights might be extinguished or evaluated.

Three of the judges held that aboriginal rights are without value unless the government obliges itself to pay by enacting compensation legislation. They also held that such rights can be extinguished implicitly through land legislation necessarily denying their continued existence. Three other judges declared that aboriginal rights cannot be extinguished without compensation or without specific direct legislation removing the right to compensation. Occupation, they said, was a proof of the continued existence of aboriginal rights and the Nishga appear to have been in possession of the Nass Valley from time immemorial; they have never made any surrender agreement with the Crown.

The Nishga lost their case on the collateral and technical point that the issue could only properly come before the court with provincial authorization. The substantive issue as to whether the Nishga have aboriginal rights remains unresolved by the courts, as it does for all other native peoples in Canada pursuing aboriginal rights claims. The judgment has left unanswered many questions as to the nature of aboriginal title, its worth, the manner by which it can be extinguished, and the degree of proof necessary to establish a valid claim to aboriginal title.

The decision not to pursue the issue further through the courts seems to have been chiefly a result of a change of attitude by the Government. The Prime Minister, speaking to a delegation from the Union of British Columbia Indian Chiefs immediately after the Supreme Court decision, told them that the judgment had led him to modify his views. He appeared to be impressed with the minority judgment and remarked, "Perhaps you have more legal rights than we thought you had when we did the White Paper".

At the same time, both the native people and the Canadian Government were aware of the negotiated agreement made between the United States' Government and the native peoples of Alaska, which had become law in December 1971. The native Indians, Inuit and Aleut had laid claim to almost all the land area of the state, an area which they had continued to use and occupy. Native action, prompted by oil and gas leases, resulted in a land freeze in 1966 pending settlement of their claims. Several bills were subsequently presented to Congress under

different sponsorships: the legislation which emerged as the Alaska Native Claims Settlement Act of 1971 marked a radical departure from any previous native land settlement policy in the United States, or elsewhere.

The Act provides for the transfer to native peoples of both land and money and for the setting up of native corporations to administer both. Alaskan natives are entitled under the Act to a total of forty million acres divided amongst 220 villages and twelve regional corporations. This amounts to about fifteen per cent of the state's area. The villages acquire the surface estate to twenty-two million acres, while the regional corporations receive the subsurface estate to that land, together with full title to sixteen million acres. The remaining two million acres are for sundry purposes including protection of existing cemeteries and historical sites. There is also provision for allotments from this amount, not to exceed 160 acres per capita, to individual natives living outside the villages. In addition, a land-use planning commission, of which at least one member must be a native person, was established. The commission's functions are advisory, not regulatory.

The monetary settlement, to be administered by the regional and village corporations, is comprised of approximately half a billion dollars from the United States Treasury over an eleven year period, and an additional half-billion from mineral revenues from lands conveyed to the state. The latter would otherwise have become state revenue. In this way, the state is sharing in the settlement of native claims.

Native people in Canada have always been keenly aware of the treatment of their brethren in the United States, and this settlement received wide publicity. The professed rationale behind the settlement was that it should not only satisfy legal and moral claims but should provide a foundation for the social and economic advancement of the native people. It has undoubtedly affected thinking in Canada on the nature of any future settlement in aboriginal rights areas in this country.

Shortly after the *Calder* decision and the Prime Minister's statement to the British Columbia Chiefs, the Yukon Native Brotherhood presented its paper, *Together Today for Our Children Tomorrow,* to the Prime Minister and the Minister responsible for Indian Affairs. The paper, undertaken with financial support from the Indian Claims Commissioner, contains the Brotherhood's proposal for negotiation and settlement of the claims of the native people of the Yukon Territory. It describes the difficulties experienced by Yukon Indians in the face of recent changes there, and outlines the Brotherhood's intention of obtaining a settlement that would help native people to influence and adjust to the rapid development of the North. This would be accomplished by ensuring them an economic base under their own control from which they might work to develop their own lives and cultures on an equal footing with the non-native population.

Such a settlement would involve the setting aside of land for the Indian people, to be held in trust in perpetuity by the Crown and controlled by native municipalities created for that purpose. Sufficient lands should be set aside to provide for municipalities where the Indian people could have permanent homes;

for historic sites and cemeteries; for hunting, fishing and trapping camps; and for economic development. Until the selection of these lands is completed, a land freeze should be imposed on all unalienated Crown lands in the Yukon. In addition to land, the Brotherhood proposed that the Indian people should receive a part of all government royalties from gas, oil, mineral and forest production and from commercial hunting in the Yukon. Further, they proposed a lump-sum cash settlement as compensation for all past grievances and individual claims.

Native participation would be guaranteed in all matters pertaining to land and water control and development and wildlife management by their representation on the relevant boards or agencies. The right to hunt and fish for food, and to trap on unoccupied lands would be guaranteed. For a period of twenty-five years, free health services would be provided and income earned on Indian lands would be free of taxation. A general corporation would be formed to manage Indian funds and provide training and resources, but control would gradually devolve upon the municipalities themselves.

The Yukon Native Brotherhood asked that a negotiating committee be established, a request which was supported by the Indian Claims Commissioner. This was agreed to by the Prime Minister. Although the task was clearly not going to be an easy one, the Government's decision to commence negotiations was a significant step forward in settling aboriginal claims throughout Canada.

In August 1973, this response to the Yukon Native Brotherhood was broadened into a statement by the Minister of Indian and Northern Affairs of general policy on the claims of the Indian and Inuit people. At the outset, the statement reaffirmed the Government's recognition of its continuing responsibility for Indian and Inuit people under the British North America Act, and referred to the Royal Proclamation of 1763 as "a basic declaration of the Indian people's interests in land in this country". It then recognized the loss of traditional use and occupancy of lands in British Columbia, northern Quebec, the Yukon and the Northwest Territories, in areas where "Indian title was never extinguished by treaty or superseded by law". For these areas, the Government offered to negotiate and enshrine in legislation a settlement involving compensation or benefit in return for the native interest. In making this offer, it expressed an awareness that "the claims are not only for money and land, but involve the loss of a way of life". The statement also pointed out that while the federal government has the authority to deal with claims in the two northern territories, elsewhere provincial land is involved. It urged that the provinces concerned be prepared to participate in the negotiations and in the settlements.

While the statement went a considerable distance in recognizing Indian claims in non-treaty areas, there are two problematical aspects. First, the policy did not cover southern Quebec and the Atlantic Provinces, where the land claims were said to be of a different character from those in the regions where original land rights were recognized. More study of the situation in these areas by both the native people and the government was suggested. In addition, there are several "non-treaty" groups in other parts of Canada, such as the Iroquois, the Sioux, and

various bands within the treaty areas. Second, there has been a great deal of concern amongst native people that the policy was heavily oriented towards the removal of rights and the provision of compensation; they would like to retain and entrench as many of their rights as possible, particularly as they pertain to land. The Inuit, for example, insist that their hunting rights be formally recognized by federal legislation and be on the basis that they have a prior right to hunt game for food or livelihood on their land.

Furthermore, while the policy provided the opportunity for dealing with claims in at least some non-treaty areas, it offered very little in relation to treaty claims and individual band claims concerning such things as reserve lands and band funds. The statement reiterated the Government's pledge to honour lawful obligations, but this does not really provide anything more than all Canadians expect of the Government on a regular basis. Nevertheless, it did refer to the Queen's statement to Indians in Calgary in July 1973, that "You may be assured that my Government of Canada recognizes the importance of full compliance with the spirit and terms of your Treaties".

The Mackenzie Valley and James Bay

Two areas in northern Canada, the Northwest Territories and the James Bay region of Quebec, have been especially significant in the litigation and negotiation of aboriginal title claims since the *Calder* decision and the opening of the Yukon negotiations. In both areas, aboriginal title has been asserted in attempts to cope with intrusive large-scale economic development and to retain the maximum of native control over their traditionally held regions. In the Northwest Territories, the native peoples are faced with a huge development project, the Mackenzie Valley pipeline, which threatens to disrupt their life. They have consistently, but unsuccessfuly, requested that the federal government impose a land freeze pending the resolution of their claims to the land, and have challenged the assertion that the treaties made in the area have extinguished their aboriginal title. They contend that the agreements they made were solely treaties of peace and friendship.

On April 2, 1973, the Chiefs of some sixteen Indian bands filed a caveat in the Land Titles Office in Yellowknife claiming aboriginal rights to almost half the land in the Northwest Territories. The effect of the caveat would have been to make any future land grants in the area subject to the claim of the Indians if it were subsequently found that they had a valid legal interest in the land. The caveat was referred to the Supreme Court of the Northwest Territories for a decision as to whether it should be accepted, and during the ensuing hearing evidence was heard from Indians involved in the treaty-making.

The following September, an interim judgment was handed down by the court, which upheld the caveat in saying, " . . . that there is enough doubt as to whether the full aboriginal title had been extinguished, certainly in the minds of the Indians, to justify the caveators [*sic*] attempt to protect the Indian position until a final adjudication can be obtained". This judgment was appealed by the federal government and was set down for hearing by the Appellate Division of the Supreme Court

of the Northwest Territories in June 1975. Meanwhile, attempts to achieve negotiations led in January 1974 to a joint announcement by the President of the Northwest Territories' Indian Brotherhood and the Minister of Indian and Northern Affairs that a committee would be established "to engage in preliminary discussions to develop the groundwork for a comprehensive settlement of Indian claims in the Northwest Territories".

The position of the Northwest Territories' Indian Brotherhood, like that of the Inuit Tapirisat of Canada, is that a settlement of native claims must precede the pipeline or any other major development projects. Although this has not yet been fully or openly accepted by the federal government, there is clearly an acceptance that a settlement must be reached as soon as possible and that negotiation is the preferred approach.

Like the Mackenzie Valley, the James Bay area is part of the Hudson's Bay Company's territories transferred to Canada in 1870. When the boundaries of Quebec were extended in 1912 to include much of this particular part of the territory, the federal government required that Quebec agree to recognize and obtain surrenders of the rights of its native inhabitants. This stipulation was not fulfilled. In a report published in 1971, the Dorion Commission appointed by the Quebec government found that the Province did indeed have such an obligation and recommended that immediate steps be taken to honour it. Subsequently, the Indians of Quebec Association began working with the Quebec Government to set up a framework for the negotiation of a settlement of their land rights. In May 1971, while these preliminary steps were being taken, the provincial government announced its intention to develop the hydro-electric power resources of the James Bay territory. Three months later, before any meetings had taken place between the Indian and provincial negotiators, the Quebec legislature established the James Bay Development Corporation, and made it responsible, with the powers of a municipal government, for developments within the affected region.

Environmental impact studies subsequently carried out found that the project would have a severe effect on the ecology of the region and specifically on the traditional livelihood of the native populace. This threat and the provincial government's refusal in negotiations to delay or modify the project led the native people to initiate legal proceedings to protect their rights. Thus, on November 7, 1972, of Grand Council of the Cree (of Quebec) and the Northern Quebec Inuit Association served notice on the governments of Quebec and Canada and the James Bay Development Corporation that they intended to seek an interlocutory injunction to suspend the project until their aboriginal title had been acknowledged and dealt with.

After a year of hearings and deliberations, the Quebec Superior Court, in November 1973, granted the injunction asked for and ordered a halt to the project. The Court found that the Cree and Inuit retained their aboriginal title, in stating that,

> . . . at the very least the Cree Indians and Eskimo have been exercising personal and usufructuary rights over the territory and the lands adjacent thereto. They have been in possession and occupation of these lands and exercising fishing,

> hunting and trapping rights therein since time immemorial. It has been shown that the Government of Canada entered into treaties with Indians whenever it desired to obtain lands for the purposes of settlement or otherwise. In view of the obligation assumed by the Province of Quebec in the Legislation of 1912 it appears that the Province of Quebec cannot develop or otherwise open up these lands for settlement without acting in the same manner that is, without the prior agreement of the Indians and Eskimo.

One week later the Quebec Court of Appeal suspended the injunction.

After an unsuccessful attempt by the Indians and Inuit to have the Supreme Court of Canada consider the case, the Quebec Court of Appeal, on November 21, 1974, unanimously overturned the lower court's judgment. One justice said, for the Court, "I am of the opinion that the Indian right to the territory in question has doubtful existence and that the recourses arising out of it, if they exist, do not entitle them to obtain an injunction to stop work on the project". [*Unofficial translation*]

Meanwhile, negotiations had led to the signing one week earlier of an Agreement in Principle by the James Bay Cree, the Inuit of Quebec, the Province of Quebec and the Government of Canada. The agreement contains the proposed terms under which the native people would surrender their interest in the 400,000 square miles of land comprising the areas transferred to Quebec by the 1898 and 1912 Boundaries Extension Acts. It provides for a continuation of negotiations to establish the final terms of settlement by November 1, 1975, and for the continuation of the hydro-electric project, as modified by the agreement, without threat of further legal action. Nevertheless, a path was left open for litigation to be pursued if a final agreement was not reached by that date.

Under this agreement, the native peoples would receive 5,250 square miles of land in some form of ownership (Category I lands). Of this land, 1,274 square miles would be administered under the Indian Act on behalf of the Cree. Another 60,000 square miles would be set aside as exclusive hunting, trapping and fishing areas for the native peoples (Category II lands). These could be expropriated by Quebec for the purpose of development, providing that they were replaced, or, with the consent of the native people, compensation were paid. In addition, native people would have exclusive hunting and trapping rights over certain animals over the whole of the territory ceded, and would participate on an equal basis with the provincial government in administering and controlling hunting, trapping and fishing.

While nearly 600 acres per capita of surface and subsurface rights passed into corporate native control under the Alaskan settlement, the James Bay Cree would gain surface rights averaging some 200 acres per capita, and 2,600 acres per capita of Category II lands. This difference in emphasis illustrates the local Grand Council's interest in an agreement that would encourage the native people in their traditional way of life.

The monetary compensation would consist of $75 million in cash to be paid over a ten-year period, of which the federal government would contribute

half. This federal contribution is based on that government's responsibilities for the extinguishment of native title in the area ceded to Quebec by the 1898 Boundaries Extension Act. That legislation did not specify a provincial responsibility as did the 1912 Act. In addition, the native people would receive a further $75 million from the royalties from the hydro project, and, for twenty years, 25 per cent of royalties on any non-hydro development begun in the region within fifty years of the settlement. The Province would own mineral and subsurface rights, but on Category I lands would be obliged to negotiate consent and compensation or royalties for any exploitation of those assets.

A provincial government scheme ensuring an annual minimum income to those who wish to pursue hunting, trapping and fishing is contemplated by the agreement, as well as some special economic development programmes. Federal and provincial programmes and funding, and the obligations of the two governments, would continue to apply on the same respective bases as to other native peoples in Canada and the Province, "subject to the criteria established from time to time for the application of such programmes". At the federal level, these apparently refer to such matters as education, housing and health.

Native concerns regarding their environment are reflected in two further terms of the Agreement in Principle. One is the provision for extensive modifications and remedial measures to the hydro project to minimize its impact on native communities and culture. The second such term provides for assessment studies of environmental and social impacts of any future developments in the territory, with native involvement in the decision-making based on such statements.

It has yet to be seen what effect this Agreement in Principle will have on the outcome of other negotiations currently under way in aboriginal title areas. In response to Inuit concerns, the Minister of Indian and Northern Affairs has affirmed that he does not regard the Agreement as a model or benchmark for the settlement of land claims by native groups elsewhere in Canada. Nevertheless, there are indications in a recent government working paper presented to the Yukon Indians that the approach taken in the James Bay Agreement is of interest to the government in relation to other areas.

Treaty Areas

The White Paper's implication that treaty rights are neither perpetually entrenched nor socially desirable aroused a quick, firm response from Indians in the southern treaty areas. In June 1970, the Indian Chiefs of Alberta presented a counter-proposal to the Prime Minister. Entitled *Citizens Plus,* but soon known as the *Red Paper* on Indian policy, the Paper castigated the Government for its efforts to impose a policy which it said "offers despair instead of hope". Recognition of Indian status is essential for justice and for the preservation of Indian culture, the Paper asserted; moreover, the treaties are "historic, moral and legal obligations" which constitute the basis for native rights in Alberta. The Chiefs

expressed the general view of treaty Indians that the spirit of the treaties, so long ignored, must now be fulfilled.

In October 1971, the Manitoba Indian Brotherhood presented a proposal to the Government entitled *Wahbung: Our Tomorrows.* Like the *Red Paper,* it stressed the belief that, "The Indian people enjoy 'special status' conferred by recognition of our historic title that cannot be impaired, altered or compromised by federal-provincial collusion or consent. We regard this relationship as sacred and inviolate." The following year, the Grand Council of Treaty No. 3, in presenting the Minister with its brief on economic and social development, stressed in addition that:

> Our Treaty must speak to our people in the present if it is to have any meaning at all to us . . . The value of the lands ceded by the Indians to Her Majesty has increased many times. We Indians recognize this and accept the terms of our Treaty. It is in this spirit of recognizing that our treaty was not frozen in time but was signed to affect the future of the descendents of the two signing parties that we now ask you to examine with us how the two economic clauses must speak to our people today.

Later, the Federation of Saskatchewan Indians presented a report to the Commissioner on Indian Claims which emphasized the specific content and interrelation of treaty rights. It said that:

> . . . the Saskatchewan treaties, when placed in their proper historical context and interpreted in relation to the severe problems facing plains tribes, emerge as comprehensive plans for the economic and social survival of the Saskatchewan Bands. To regard the treaties as "mixed bags" of disparate and unrelated "rights" and "benefits" — though these rights and benefits have undeniable reality — is too simplistic an analysis and fails to acknowledge their full scope and intent.

The reaction on the part of treaty Indians to the Government's White Paper has served as notice of the types of treaty claims that will eventually be brought forward. These Indians have been quite reluctant to advance their claims piecemeal. Indications are that their general claims may be ready for presentation within a year or two. In the meantime, there is some interest in preliminary discussions on pressing treaty issues such as education, and hunting and fishing rights. Eventually, other matters such as economic development, taxation, health services, and the central grievance concerning the erosion of tribal government and community fabric, will come to the fore.

While the government has received and studied the various papers submitted by Treaty Indian Associations, these papers have not been seen as official claims, and there has been no significant response except for the continuing assurance that the government will honour all lawful obligations, and the indication in the August 1973 policy statement that the spirit and terms of the treaties will be upheld. Outside the Northwest Territories, provincial involvement remains a problem, since agreements on a number of the issues might require provincial co-operation.

Consideration of treaty claims will need to be closely tied to efforts at revising the Indian Act. Treaty Indians in Alberta and Saskatchewan, at least, see the revision to the Act as a vehicle for consolidating recognition of their treaty rights. It would seem that any fundamental changes in the Act must await resolution of the basic issues in both treaty and non-treaty areas.

Band Claims

Since 1970, when the federal government began funding Indian research into claims, there has been a sizable number of claims presented by Indian bands. Nearly all have had to do with losses of land from Indian reserves. They have come primarily from the Maritime Provinces and the Prairies, with a lesser number from Quebec, Ontario and British Columbia. Some of these claims have been submitted to the Department of Indian and Northern Affairs; others have been directed through the Commissioner.

The presence of these claims has put substantial pressure on the government to react. Judging from the urgency behind some of the issues and the fact that there are potentially hundreds, if not thousands, of similar claims, this situation will probably become more acute. While a few of these claims are being resolved on an ad hoc basis, there are basic problems that must be dealt with before the bulk of them can be resolved. This is necessary to avoid the possibility of seriously prejudicing the interests of the larger Indian community. While there is urgency in dealing with some individual band claims, there is also recognition that every effort must be made to resolve the key questions in a way which involves full Indian representation from the area affected. In contemplating this approach, it must be appreciated that most of the issues are complex, and that it will take time before the majority of bands have carried out sufficient research and deliberations to enable them to bring their issues forward. At present, there does not appear to be any government policy in relation to these claims, other than the honouring of lawful obligations. Until there is agreement between the government and Indians on the fundamental questions, it will be difficult to deal with individual band claims effectively.

A New Approach to Resolution

In April 1975, at a meeting between the National Indian Brotherhood and a committee of federal Cabinet Ministers, a proposal for claims processes that had been developed through consultation between Prairie Indians and the Indian Claims Commissioner was put forward and accepted in principle by the Ministers.

The primary procedure for dealing with claims would allow basic issues to be brought up through provincial and territorial Indian associations and presented directly to Cabinet Ministers. The issues would be discussed in this forum to determine whether there was a basis for agreement. Through this process, general principles and parameters for settlement mechanisms might be established. Such agree-

ments would allow detailed treatment of the issues to be delegated. In some cases, this might require negotiations at a secondary level. In others, administrative machinery might be appropriate, while in further instances, it might be desirable to refer matters to the courts or specially created arbitration tribunals. In this way, the settlement processes would be tailored to the issues and based on fundamental agreements in principle. To facilitate such negotiations, a new impartial commission is proposed.

The agreement contemplates a totally original and innovative institution for dealing with claims issues. Its implementation should create a new negotiation-centred era of activity towards claims resolution.

EXPOSÉ PRÉLIMINAIRE

C'est de multiples façons, à divers degrés et à différents moments de l'histoire que la population autochtone du Canada entre dans la mouvance européenne. De fait, ce n'est guère qu'à l'aube du XX^e siècle que l'homme blanc pénètre l'Arctique et que depuis la fin de la Seconde Guerre mondiale que son influence s'y fait véritablement sentir, alors que les Indiens de la côte atlantique et des rives du Saint-Laurent entrent en contact avec les Européens dès le début du XVI^e siècle. Cela vaut d'ailleurs aux Beothuk de Terre-Neuve d'être rayés de la carte et aux autres Indiens des régions méridionales du pays d'adopter un mode de vie de plus en plus euro-canadianisé. Plus au nord, les coutumes se conservent mieux, restent plus proches du mode de vie traditionnel, mais nulle part les habitudes indigènes ne sortent indemnes de la colonisation et de la domination européennes des territoires qui appartenaient autrefois exclusivement aux autochtones.

La prise de contact revêt des formes multiples elle aussi. Le commerce des fourrures modifie considérablement le mode de vie d'une grande partie de la population indienne, tant du point de vue économique que du point de vue social, car non seulement il introduit les produits et les conceptions commerciales européennes, mais aussi le système de valeurs et les croyances religieuses des blancs. Parallèlement, ces relations sociales font naître un peuple d'ascendance mixte, que l'on désignera souvent par la suite sous le nom de «Métis».

L'occupation ultérieure des territoires indispensables à la colonisation effrite plus avant les assises économiques et socio-culturelles des sociétés indigènes. Par ses répercussions sur l'environnement, la mise en exploitation des ressources naturelles contribue directement et indirectement à bouleverser les habitudes de vie des autochtones dans presque toutes les régions du pays. Et ces activités se poursuivent de nos jours, avec les mêmes conséquences.

Très tôt, le gouvernement de la société colonisatrice se réserve toutes responsabilités en matière de relations entre les immigrants et les sociétés indigènes. Ainsi, aux termes de la loi, les droits des autochtones à la terre ou aux autres ressources naturelles ne peuvent-ils être acquis directement par les nouveaux venus, mais uniquement par l'entremise des autorités. Parallèlement, c'est le gouvernement qui se charge de la majeure partie de l'administration des sociétés autochtones, tout particulièrement lorsque leur mode de vie traditionnel a été profondément modifié. C'est du reste dans ce lien historique entre le gouvernement et les groupes indigènes qu'il faut voir la raison de leur insistance à perpétuer leur statut spécial de peuple d'origine. Corollairement, c'est la Couronne qui devient la cible des plaintes et des revendications relatives à la terre, aux ressources et à la gestion des affaires des autochtones, revendications et plaintes que les Indiens fondent sur leurs droits d'aborigènes ou les accords antérieurs conclus sur la base de leur situation particulière en tant qu'indigènes non conquis installés dans le pays.

Encore faut-il, pour mettre en œuvre une politique visant à traiter les autochtones différemment des autres citoyens, être en mesure de déterminer ce qui constitue l'appartenance à une société aborigène. Or, le mélange des races et l'évolution constante du mode de vie brouillent, dans bien des cas, la limite entre indigènes et immigrants. La solution qui émerge consiste à distinguer deux grandes catégories de personnes d'ascendance indienne et à fonder cette distinction sur la situation des intéressés du point de vue administratif: d'une part, ceux que le gouvernement canadien classe «Indiens inscrits», d'autre part, ceux que l'on désigne par le vocable «Indiens non inscrits» et les Métis. Les premiers sont portés sur les rôles du ministère des Affaires indiennes et du Nord canadien; dès lors, ils bénéficient des droits et sont assujettis aux exclusions stipulées dans la Loi sur les Indiens, qui, avec l'interprétation qu'en donne l'Administration, détermine dans la pratique ce que signifie le titre d'Indien inscrit pour les quelque deux cent cinquante mille personnes à qui on le reconnaît.

Les Indiens non inscrits sont, eux aussi, des individus d'ascendance indienne, mais qui, pour diverses raisons, n'ont pas été portés sur les rôles du ministère. Leur nombre varie de ce fait en fonction des critères utilisés, mais on estime que cinq cent mille personnes au moins entrent dans cette catégorie, qui regroupe notamment les femmes ayant perdu leur statut d'Indiennes par mariage, ou dont les ancêtres l'ont antérieurement perdu de la même façon. Ce groupe comprend en outre ceux qui ont renoncé volontairement à leur statut d'Indien par ce qu'on appelle «émancipation». Les Métis représentent pour leur part l'un des groupes importants ne bénéficiant pas du statut d'Indien et constituant une société distincte avec sa propre identité.

Force est cependant de reconnaître que, à moins d'accorder le statut d'Indien inscrit à toute personne pouvant faire état d'une ascendance indienne plus ou moins lointaine, il fallait bien fixer certaines limites. La législation concernant les Indiens adoptée avant la Confédération a fondé ses définitions, assez vagues, sur l'hérédité et certains facteurs sociaux et ce sont ces critères que l'on reprend dans les premiers textes législatifs du jeune dominion. Dans l'Ouest, le fait d'être couvert par un traité devient la pierre de touche de la qualité d'Indien, ce qui explique que les autochtones de cette région soient souvent désignés par le titre d'«Indiens assujettis aux traités». Au demeurant, les rôles d'«Indiens inscrits» s'allongent à l'à peu près et, il semble bien, tout à fait arbitrairement. Quoi qu'il en soit, le ministère fédéral des Affaires indiennes et du Nord canadien n'admet de responsabilités en vertu de la Loi sur les Indiens qu'à l'égard des individus et des bandes figurant sur ses listes.

Aux yeux du gouvernement, les Indiens non inscrits et les Métis n'ont droit à aucun statut particulier et sont des Canadiens comme les autres. C'est pourquoi, alors qu'elles se reconnaissent des obligations particulières en matière d'éducation, de santé, de bien-être et de développement économique des Indiens inscrits, les autorités n'en admettent aucune à l'égard des Indiens non inscrits et des Métis, qui sont censés se prévaloir de ces services auprès des mêmes organismes que les autres «Canadiens», c'est-à-dire, ordinairement, auprès des administra-

tions provinciales. L'Acte de l'Amérique du Nord britannique impose au gouvernement du Canada la charge des Indiens et des terres qui leur sont réservées, mais ne donne aucune précision quant à la signification exacte de ces termes. C'est ce qui permet aux Indiens non inscrits et aux Métis de faire valoir que le gouvernement ne saurait arguer de la constitution pour restreindre ses responsabilités en limitant la signification du mot «Indien» à celle qu'il lui donne dans la Loi sur les Indiens. C'est aussi pourquoi la question du statut et de l'appartenance à un groupe reconnu constitue une dimension importante de toute étude des revendications et des plaintes des autochtones.

Le troisième groupe aborigène rassemble les Inuit, ou Esquimaux. Si la question de leur statut, si longtemps ambigu, n'est pas prévue par les cadres administratifs dont nous venons de parler, c'est en partie parce qu'ils sont implantés aux confins du Nord canadien. Pendant très longtemps, certains services sociaux leur sont fournis par les missions et les comptoirs, ou par différents paliers de gouvernement et diverses administrations. La modification des frontières du Québec, qui en 1912 repousse les limites de cette province vers le nord, est considérée par le gouvernement fédéral comme impliquant la prise en charge intégrale des résidents inuit par le gouvernement de Québec. Or, il se trouve qu'à l'époque, la grave détérioration de l'économie de cette société entraîne des majorations constantes des subventions de secours nécessaires. C'est la Cour suprême qui, en 1939, réglera la question des compétences, en statuant que, aux fins de l'Acte de l'Amérique du Nord britannique, les Inuit doivent être considérés comme des Indiens. Mais, s'ils passent ainsi dans le domaine fédéral de responsabilités, ils ne tombent pas pour autant dans le champ d'application de la Loi sur les Indiens, et le gouvernement continue de les traiter comme une entité ethnique distincte.

Voilà donc, par catégories juridiques, les principaux groupes d'autochtones. Ces distinctions influent considérablement sur les revendications, qui concernent en général trois grands domaines: les droits aborigènes, les plaintes relatives aux traités et aux certificats de concession de terres et les revendications des bandes. C'est la notion de droits aborigènes qui sous-tend toutes les autres revendications. Les autochtones prétendent en effet que leur droit à la terre découle de leur qualité de premiers habitants du pays et soulignent que la société dominante leur a reconnu le titre d'aborigène dans diverses décisions judiciaires et administratives. Il importe à ce propos de remarquer que nul traité de cession de territoire n'a été conclu avec eux pour près de la moitié du Canada et que c'est sur ce fait que tant les Indiens inscrits et non inscrits que les Inuit se fondent pour préparer la présentation de leurs revendications et leurs négociations avec les autorités.

Un certain nombre des revendications des Indiens assujettis aux traités concernent le protocole des accords de cession de leurs territoires. Certaines arguent avec instance du fait qu'un certain nombre de clauses n'ont pas été respectées et que le gouvernement n'a pas tenu compte de l'esprit général des traités. On se plaint communément de ce que les engagements verbaux pris au moment des négociations n'ont pas été inclus dans les textes. Dans certaines régions, les Indiens avancent par ailleurs que les compensations ont été tout à fait insuffisantes même lorsque toutes les clauses ont été respectées. Ces revendications soulèvent le

problème des modalités des négociations, de l'inégalité patente des deux parties contractantes et de la prétendue injustice des clauses.

Pour la plupart, les Indiens inscrits font partie de bandes qui détiennent les droits sur les terres possédées en commun dans le cadre des réserves. Cinq cent cinquante bandes jouissent ainsi des droits accompagnant la possession de deux mille deux cents réserves. Cependant, qu'elles se trouvent ou non dans une région couverte par traité, la plupart des bandes ont en général quelques revendications précises, dont les plus nombreuses et les plus fréquentes ont trait à l'aliénation de terres ayant appartenu aux réserves. Celles-ci ont en effet parfois été «grignotées» par appropriation pure et simple ou par les relevés topographiques subséquents même si, le plus souvent, ce rétrécissement est dû à des cessions en bonne et due forme ou à des expropriations. La plainte se fonde tantôt sur la nature et la légitimité de l'acte, tantôt sur la moralité de ces formes d'acquisition. Par ailleurs, la question de la gestion des fonds de la bande et des ressources de la réserve, et de l'administration des affaires de la bande, en général (tout particulièrement en ce qui a trait au développement économique), constitue également un facteur primordial pour un grand nombre de revendications en puissance.

Comme il sera donné au lecteur de le constater, la terre représente un élément extrêmement important dans l'ensemble des revendications des autochtones. Alors même qu'ils ont appris à mieux exprimer le sens exceptionnel de leur rapport, présent et passé, à la terre, ils prennent conscience du fait que le niveau de vie canadien, en définitive, provient de la terre et des ressources naturelles du pays. C'est ce qui les amène non seulement à vouloir jouer un rôle dans la prise des décisions ayant trait à l'utilisation de la terre et des autres ressources, mais à revendiquer une juste proportion des avantages retirés de leur exploitation. C'est là l'un des thèmes fondamentaux des revendications touchant les droits aborigènes que l'on retrouve dans celles qui concernent les traités lorsque les accords initiaux régissant les terres sont remis en question, ainsi que dans celles qui sont dues à des reculs des limites des réserves ou à des appropriations de ressources naturelles.

Pour les populations autochtones, la tutelle, autre aspect essentiel des revendications, implique à la fois protection et assistance. En effet, en prenant en charge le contrôle politique de la population autochtone, ainsi que les réserves et finances des bandes et en assortissant de restrictions particulières le statut d'Indien, le gouvernement assume, à l'égard de ces collectivités et de leurs affaires, un rôle protecteur analogue à celui d'un tuteur ou d'un curateur tutélaire. Et c'est précisément de cette situation que découlent plaintes et revendications concernant la façon dont le gouvernement administre les biens des Indiens.

I NATURE DES REVENDICATIONS

Droits aborigènes

Le principe des droits à la terre des autochtones, ou aborigènes, découle d'une réalité fondamentale de l'histoire du Canada, savoir: les Indiens et les Inuit furent

les premiers habitants du pays et y exercèrent une souveraineté de fait jusqu'à l'arrivée des représentants des puissances coloniales européennes. On trouve dans une déclaration faite par la Fraternité nationale des Indiens devant le Comité permanent des affaires indiennes et du développement du Nord canadien l'interprétation que les autochtones donnent de ce concept.

> Le titre de propriété territoriale des Indiens, tel qu'il est défini dans le droit anglais, implique des droits aussi entiers que ceux d'un propriétaire foncier légitime à une restriction près. La tribu ne pouvait pas aliéner son titre; elle ne pouvait que céder ou limiter son droit usufruitier sur le territoire. Le droit anglais décrit le titre de propriété territoriale des Indiens comme le droit d'utiliser et d'exploiter toutes les possibilités économiques du territoire et des eaux adjacentes, y compris la faune, les produits, les minéraux et toutes les autres ressources naturelles, ainsi que les droits riverains, côtiers, et marins . . .

Et bien qu'il n'ait jamais été clarifié en droit canadien, le droit de propriété des autochtones se trouve mentionné dans certains documents judiciaires, qui le définissent comme «un droit personnel et usufructuaire», c'est-à-dire un droit d'utilisation et d'occupation des lieux dont on peut user «à la discrétion du Souverain».

Les colons britanniques estiment leur usurpation des terres indiennes entièrement justifiée, convaincus qu'ils sont de la supériorité intrinsèque de leur civilisation, qui s'incarne dans de puissants États chrétiens reposant sur une agriculture sédentaire et une technologie avancée, sur les cultures autochtones fondées, elles, sur la chasse, la pêche, la cueillette et une horticulture sporadique. Pour ces colons, il ne fait aucun doute que de cette supériorité et de l'idéologie dont elle s'assortit découlent le droit, et même le devoir de dominer. Néanmoins, tout en niant la souveraineté des autochtones ou le plein droit de propriété des indigènes, la Couronne britannique en vient à reconnaître une certaine forme de droit des aborigènes à la terre. Et bien que ce droit reconnu ne soit pas toujours respecté, sa valeur juridique acquiert de plus en plus de force au fil des années de colonisation; au niveau des principes définis pour traiter avec les Indiens et se procurer des terres pour la colonisation d'abord, dans la législation coloniale ensuite, puis dans les instructions transmises aux gouverneurs des colonies, enfin, dans la Proclamation royale de 1763, où ce droit reçoit la caution officielle de l'Empire.

La Proclamation, qui représentera l'un des documents les plus importants de la controverse portant sur le droit des aborigènes à la terre, délimite les territoires devant être réservés aux Indiens, au-delà des frontières des nouvelles colonies de Québec, de Floride orientale et de Floride occidentale, du territoire de la Compagnie de la baie d'Hudson et des frontières, «à l'ouest des sources des rivières qui de l'ouest et du nord-ouest vont se jeter dans l'océan Atlantique». Partiellement inspirée par un désir de couper court aux graves abus qui ont provoqué de violentes réactions de la part des Indiens, elle interdit notamment tout achat de «terres . . . qui [n'] ont été ni cédées ni achetées par Nous [la Couronne], tel que susmentionné, et ont été réservées pour les tribus sauvages susdites ou quelques-unes d'entre elles».

Afin que puissent être légalement acquis certains territoires indiens dans les régions où l'on souhaite stimuler la colonisation, c'est-à-dire en Nouvelle-Écosse et dans l'ancien Québec, la Proclamation définit les modalités selon lesquelles ces

acquisitions pourront être faites: «à une réunion publique . . . des sauvages qui devra être convoquée à cette fin par le gouverneur ou le commandant en chef de la colonie dans laquelle elles [les terres] se trouvent situées. . .». C'est cette façon de procéder qui servira de base aux traités signés dans le Haut-Canada (l'actuel Sud ontarien) jusqu'à la Confédération.

Depuis la Confédération, le droit des aborigènes à la terre figure dans les principaux traités par lesquels diverses tribus ont consenti à «céder, abandonner, abdiquer ou renoncer à» leur droit à la terre, ainsi que dans un certain nombre d'accords, décrets, principes directeurs et textes de loi ayant trait aux terres en général ou aux autochtones.

Le transfert, en 1870, de la Terre de Rupert et du Territoire du Nord-Ouest de la Couronne au Dominion du Canada en constitue l'un des principaux exemples. En effet, aux termes d'une annexe au décret de ce transfert, les réclamations des tribus indiennes en compensation pour des terres requises pour des fins de colonisation seront «considérées et réglées conformément aux principes d'équité qui ont uniformément guidé la Couronne anglaise dans ses rapports avec les aborigènes». Par ailleurs, en 1875, le gouvernement canadien, exerçant son droit de contrôle de la législation provinciale, révoque la Loi sur les terres de la Couronne adoptée par la Colombie-Britannique parce qu'elle ne reconnaît pas le droit des Indiens à la terre. Parallèlement, la Loi de l'extension des frontières du Québec de 1912, en vertu de laquelle une bonne partie de ce qui est maintenant le Nord québécois est annexée à la province, stipule que celle-ci reconnaîtra les droits territoriaux des Indiens «dans la même mesure, et obtiendra la remise de ces droits de la même manière, que le Gouvernement du Canada a ci-devant reconnu ces droits et obtenu leur remise . . . » et, en 1921, le décret du conseil autorisant la négociation du Traité nº 11 (Territoires du Nord-Ouest) déclare «préférable de suivre la politique habituelle et d'obtenir des Indiens qu'ils renoncent à leurs droits de propriété . . . ».

Cette traditionnelle reconnaissance du droit de propriété des aborigènes n'est pas toujours respectée ou mise en pratique. Ainsi aucun traité n'a-t-il éteint ce droit dans une bonne partie du Canada, et notamment dans le Québec, la majeure partie de la Colombie-Britannique, le Yukon, les régions inuit des Territoires du Nord-Ouest et les Maritimes. Ce à quoi il convient d'ajouter que l'extinction de ce droit dans les régions indiennes des Territoires du Nord-Ouest est contestée. C'est en Colombie-Britannique que les aborigènes ont d'abord revendiqué leur droit de propriété de façon officielle, voilà plus de cent ans, et, par la suite, qu'ils se sont mis à le faire valoir dans toutes les régions non couvertes par traité. Si elles diffèrent sur certains points d'une région à l'autre, ces revendications se présentent en général sous deux formes: demande de reconnaissance formelle, sur le plan juridique, d'un droit de propriété non éteint et de ceux qui en découlent, ou demande d'indemnisation équitable et suffisante pour l'aliénation ou l'extinction de ce droit de propriété.

Dans les régions non peuplées du Nord canadien, où Indiens et Inuit pratiquent depuis toujours la chasse, la pêche et le piégeage, les indigènes font essentiellement porter leurs propositions de règlement des revendications sur la confirmation

des droits aborigènes; ils sont en effet convaincus que rien ne saurait mieux garantir l'intégrité et le développement de leur patrimoine culturel que leur participation active au contrôle de la mise en valeur et de l'utilisation des terres du Nord. Ainsi, le président de la Fraternité des Indiens des Territoires du Nord-Ouest déclarait récemment que son peuple

> . . . considère l'accord de cession de territoire comme le moyen de faire ressortir la communauté d'intérêt des autochtones du Nord, et non de l'obscurcir. C'est pourquoi nous insistons tant [sur le fait] que notre but principal, c'est la reconnaissance officielle de nos droits, et non leur extinction . . .
> . . . Ce que nous désirons obtenir aujourd'hui, par le biais des accords de cession de territoire, c'est une base économique sous notre contrôle, qui nous assure l'autonomie et nous permette de participer en égaux aux décisions qui modèlent notre existence.

Par contre, dans le Sud, où la population est plus dense, c'est beaucoup plus sur une indemnisation pour extinction de leur droit de propriété, la restitution de certains autres, comme les droits de chasse et de pêche, et l'exonération d'impôts que portent les revendications, car, dans toutes ces régions, les autochtones voient dans l'accord éventuel le moyen de parvenir peut-être enfin à reprendre en main et à façonner eux-mêmes leur propre vie et celle de leurs communautés.

Traités et certificats de cession de terres

Bien que la question des droits territoriaux des autochtones du Canada ne soit nullement traitée de façon uniforme, il émerge peu à peu, en Amérique du Nord britannique, un ensemble cohérent de précédents et de traditions dans les nouvelles «marches» de la colonisation, là où l'on encourage une implantation rapide de population ou l'exploitation des ressources naturelles. Cela nécessite la signature de traités en vertu desquels les autochtones renoncent à la plupart de leurs droits territoriaux en contrepartie de diverses compensations. Mais, bien que de nombreux traités de cession aient déjà été signés dans les treize colonies américaines, ce n'est qu'après leur guerre d'indépendance que le système commence à être appliqué de façon systématique au Canada.

Lorsque, en 1763, le territoire, jusque-là sous contrôle français, passe aux mains des Anglais, la population indienne du Sud ontarien se compose de peuplades algonquines. Ce n'est que vingt ans plus tard que les colons européens commencent véritablement à s'y installer. En effet, la sécession de treize colonies de l'Amérique du Nord britannique crée des besoins territoriaux pressants pendant l'après-guerre; il faut des terres pour installer les soldats démobilisés et les Loyalistes. Et les régions non peuplées de l'Amérique du Nord britannique offrent une solution immédiate au problème.

C'est ainsi qu'environ dix mille Loyalistes s'établissent le long du Saint-Laurent et dans la région inférieure des Grands lacs. Mais s'il organise cette colonisation, le Gouvernement impérial ne se borne pas à accorder des terres aux nouveaux venus sans tenir compte des populations indigènes. On le sait, la Proclamation royale de 1763 a institué en principe que les droits de propriété des

Indiens ne peuvent être aliénés qu'à l'occasion d'une réunion ou d'une assemblée des Indiens tenue à cette fin, et seulement au profit de la Couronne. Or, si ce principe ne sera souvent respecté que pour mieux être tourné, il est appliqué dans le futur Sud ontarien et sous-tend une série de traités et de cessions en bonne et due forme extrêmement complexes.

Aux yeux du gouvernement, ces traités ne constituent ni plus ni moins que la cession d'un territoire en échange d'une indemnisation définitive généralement payée en nature; il apparaît toutefois aujourd'hui que certains Indiens croyaient à l'époque que les autorités assuraient en fait une tutelle bien plus ample aux termes de l'entente. Le versement d'annuités, de redevances annuelles, en contrepartie de la cession des droits de propriété apparaît pour la première fois dans un traité de 1818; par la suite, cette formule sera de règle. La constitution de réserves indiennes n'est alors que rarement prévue par les accords. De même, la conservation des droits de chasse et de pêche sur les territoires cédés est très peu souvent stipulée dans les textes. Ce n'est qu'à partir de 1850, lorsque William Robinson négocie les cessions des droits de propriété de la rive nord des lacs Huron et Supérieur, que les traités accordent aux Indiens les quatre formes de compensation suivantes: le règlement définitif de certaines indemnités, le versement d'annuités, la constitution de réserves et l'octroi de garanties quant aux droits de chasse et de pêche. Alexander Morris, le plus célèbre des négociateurs gouvernementaux, y verra les «précurseurs des traités à venir», que signera le dominion nouvellement créé.

Les dispositions de bon nombre de traités et de cessions intéressant le Sud ontarien détonnent par rapport à celles d'accords plus récents, beaucoup plus généreux à l'égard des autochtones d'autres régions. La plupart des cessions effectuées en Ontario après 1830 prévoient une administration en fidéicommis, le gouvernement se chargeant de disposer des territoires cédés au nom des Indiens et leur versant, en règle générale, le produit des ventes. Toutefois, comme dans le cas des cessions territoriales antérieures, qui n'étaient le plus souvent qu'une cession pure et simple des terres à l'acheteur, en l'occurrence le gouvernement, il semble bien que les indemnisations restent insuffisantes. Celles qui sont conclues avant 1818 prévoient le paiement d'une somme forfaitaire et d'une redevance annuelle insignifiante, équivalant, par exemple, dans le cas de la cession du *township* de Thurlow (1816), à un loyer nominal ou, dans celui des Chippewa, à une vague promesse d'assistance dans les secteurs agricole et de l'instruction en contrepartie de la renonciation des droits sur une superficie d'un demi-million d'acres au sud d'Owen Sound. Aux termes des traités concernant la région des lacs Huron et Supérieur conclus par Robinson, les Indiens ne reçoivent par ailleurs qu'une indemnité minimale; il y est cependant stipulé que les annuités seront légèrement majorées à l'avenir. Quant au fait que le premier de ces traités semble laisser entiers les droits aborigènes à Témagami, c'est par un oubli qu'il faut l'expliquer.

C'est dans les années 1870 que l'on signe les traités 1 à 7 portant sur les territoires situés entre l'ouest du bassin fluvial alimentant le lac Supérieur et les Rocheuses, c'est-à-dire le Nord-Ouest, nouvellement acquis par le Canada. Ces traités reprennent en grande partie les dispositions de leurs prédécesseurs, mais ils

sont à la fois beaucoup plus complets et plus uniformes. Pourtant, ni leurs caractéristiques ni leurs similitudes ne résultent d'une politique concertée. De fait, immédiatement avant la conclusion du premier, le gouvernement dispose de bien peu de données sur les Indiens de son nouveau territoire, et bien moins encore d'une politique. Les autorités négocient donc au coup par coup, en fonction des impératifs de la situation. Ce qui explique que l'expérience antérieure soit quasi inévitablement adaptée en fonction de l'époque et du lieu. Ces sept traités seront en partie modelés par les Indiens eux-mêmes et indirectement influencés par les pratiques en vigueur aux États-Unis.

Dans le Nord-Ouest, le gouvernement négocie les traités afin de pouvoir disposer des terres nécessaires à la colonisation et à l'exploitation des ressources. Il le fait aussi parce qu'il désire ardemment donner aux Indiens des satisfactions suffisantes pour assurer la paix. La question de la nature exacte et de l'étendue des droits des autochtones sur les territoires en question n'est pas plus abordée au cours des négociations que définie au moment de la signature des traités proprement dits. Il semble néanmoins évident que l'intention du gouvernement ait bel et bien été d'éteindre tout droit aborigène à la terre, puisque la première clause de chacun des sept accords fait état d'une cession de territoire. Pourtant, les négociations préliminaires n'y insistent nullement. Tout au contraire, elles mettent l'accent sur ce que les Indiens retireront de ces traités bien plus que sur ce à quoi ils renonceront. Et les commissaires leur assurent que la Reine comprend leurs problèmes et ne souhaite rien plus que de leur venir en aide.

Quoi qu'il en soit, la perte de tout contrôle sur l'utilisation des sols et la contraction des réserves de gibier mettent en péril le mode de vie traditionnel des autochtones. Aussi, tout en s'efforçant de conserver autant d'autorité que possible sur leur propre territoire et sur leur avenir, les Indiens essaient-ils de se faire accorder des compensations et une aide suffisantes pour garantir leur survivance dans un monde en constante évolution. Leur intransigeance dans les négociations leur permettra de faire ajouter certaines clauses que le gouvernement n'avait pas prévu d'incorporer aux traités, dont une aide dans le secteur agricole et certaines libertés de chasse et de pêche.

De nos jours, les Indiens avancent plusieurs arguments quant à ces traités, dont le plus important est sans doute que les textes signés à l'époque ne reflètent nullement les idées-forces des promesses faites oralement pendant les négociations et crues par les Indiens, peuple de tradition orale. Selon eux, ce qu'ont compris leurs ancêtres c'est que les traités étaient spécifiquement destinés à les protéger et à les aider à s'adapter aux nouvelles réalités, à leur permettre de créer une agriculture susceptible d'étayer leurs moyens d'existence traditionnels, la chasse et la pêche.

Les associations indiennes contestent vigoureusement l'interprétation officielle selon laquelle le gouvernement ne serait tenu de respecter que les clauses écrites des traités, telles qu'elles apparaissent dans les textes. Elles se trouvent toutes d'accord pour insister sur le fait que les traités ne sauraient être pris indépendamment des déclarations des agents du gouvernement de l'époque. Dans un mémoire

présenté au commissaire aux revendications, la Fédération des Indiens de la Saskatchewan déclare notamment:

> C'est toujours le même message que le commissaire Morris adresse aux chefs au fil de ses déclarations, pendant la négociation des traités: la Reine ne vient pas marchander leurs terres aux Indiens, elle vient les aider, alléger leurs maux, tenter de leur assurer un avenir de sécurité. «Nous ne venons pas ici en marchands, vous acheter ou vous vendre des chevaux ou d'autres produits; si je suis ici, fils de la Reine, c'est pour vous aider. Sa Majesté connaît votre misère, sait qu'il vous est difficile de trouver de quoi vous nourrir, vous et vos enfants, que les hivers sont rigoureux, que vos enfants ont souvent faim. Mais elle s'est toujours autant souciée de ses enfants rouges que de ses enfants blancs. Son cœur généreux et sa main charitable la poussent à vous venir en aide . . .»
>
> Ces promesses, ces déclarations quant aux intentions de la Couronne, et bien d'autres, toutes semblables, faites par Morris dans ses discours aux chefs, ne sauraient être considérées séparément du texte des traités pour la simple raison que l'assemblée des Indiens n'en a pas mis la vérité en doute.

Les modalités d'application des dispositions du traité sont à l'origine d'autres plaintes du même ordre. La politique de détribalisation ouvertement pratiquée par le gouvernement afin d'accélérer l'assimilation du peuple indien justifie bon nombre de mesures précises qui réduisent à néant les efforts déployés par les Indiens pour s'épanouir dans leur propre contexte culturel. Le secteur de l'éducation est, à ce sujet, exemplaire à tous points de vue, tant on peut facilement imaginer l'effet que peut produire sur des enfants, placés en internat, un enseignement qui leur apprend que le langage et la culture de leurs parents sont inférieurs et qui leur inculque des coutumes et des valeurs étrangères.

Selon les Indiens, dans les dernières décennies du XIX^{e} siècle et les premières du XX^{e}, non seulement le gouvernement ne fournit pas l'assistance attendue en matière d'agriculture, mais il entrave indûment la mise en valeur des terres indiennes et favorise la cession des meilleures terres arables des réserves lorsqu'il constate l'échec de sa tentative de transformation des Indiens en agriculteurs.

Toutes les fédérations autochtones des Prairies souhaitent, comme le Grand Conseil du Traité n^{o} 3 (Nord ontarien), voir les traités remaniés afin qu'y reparaissent l'esprit et l'intention des négociateurs de l'époque. Comme dans le cas de la question du droit de propriété des autochtones, l'accord pourrait, à leur avis, révolutionner l'avenir des peuplades et des réserves indiennes en jetant les bases d'un développement directement infléchi par les autochtones eux-mêmes. Les organismes groupant les Indiens couverts par traité ont défini certains objectifs et formulé diverses propositions relativement à la façon d'envisager le développement; ce qui en ressort en premier lieu, c'est leur refus catégorique de la notion d'assimilation (ou «détribalisation») et, prolongement direct de ce rejet, la conviction que c'est au peuple indien lui-même qu'il appartient d'orienter et de contrôler le développement.

Ce n'est qu'au début du siècle que, contrecoup de la mise en exploitation des ressources minières, sont entamées les négociations portant sur des traités intéres-

sant les régions situées au nord des territoires cédés dans les années 1870: Traité n° 8 dans le district de l'Athabaska, Traité n° 9 dans le Nord ontarien, Traité n° 10 dans le nord de la Saskatchewan. Parallèlement, l'adhésion de nouveaux groupes indigènes au Traité n° 5 permet de reporter la limite septentrionale du territoire cédé en vertu de cet accord à la frontière nord du Manitoba. Enfin, en 1921, la découverte de pétrole à Norman Wells conduit à la conclusion du Traité n° 11 qui couvre les Territoires du Nord-Ouest.

On a soulevé une question particulièrement importante à propos des Traités n^{os} 8 et 11, savoir: si les ententes engageaient véritablement les autochtones à céder leurs droits à la terre. En effet, tant les témoignages des témoins oculaires indiens que les rapports de ces discussions viennent contredire cette thèse sur plusieurs points cruciaux. La déclaration du commissaire chargé de la négociation du Traité n° 8, au Petit lac des Esclaves, en 1899, ne mentionne que ce que les Indiens retireront de l'accord, sans faire la moindre allusion, nulle part dans le texte, à une quelconque cession de territoire et, comme dans le cas du Traité n° 11, tout porte à croire que les autochtones ignoraient tout de cet aspect du traité. Il est vrai que les agents du gouvernement précisent clairement que le pays sera ouvert à la colonisation et au développement, mais, si les Indiens comprennent bien qu'ils ne doivent mettre aucun obstacle à la venue des colons légaux, ce qu'ils cherchent à obtenir en retour, ce sont des garanties pour leur mode de vie fondé sur la chasse, le piégeage et la pêche.

Les dispositions de ce traité s'inspirent fortement de celles des traités couvrant les Prairies et le «Park Land». C'est pour cette raison que les clauses prévoyant la constitution de réserves de terrains et une aide à l'agriculture, tout à fait adaptées aux conditions climatiques et géologiques du Sud canadien, sont reprises dans les accords conclus avec les populations du Nord, où les sols sont généralement incultivables. Mais contrairement à ceux des Prairies, les Indiens de Fort Chipewyan refusent de s'installer dans des réserves, parce qu'ils considèrent essentielle une absolue liberté de mouvement. On peut dès lors se demander pourquoi ils acceptent de signer les traités. Selon les témoins oculaires des négociations: parce qu'on leur donne l'entière assurance que le traité n'aura pour eux aucune conséquence négative, qu'ils ne seront ni confinés dans des réserves ni privés de leur droit de chasser, de piéger et de pêcher.

Outre les autochtones que le gouvernement canadien accepte de reconnaître en tant qu'Indiens possédant un droit naturel à la terre, il existe, dans les régions intérieures de l'Ouest canadien, une vaste population de Métis. En majorité, ceux-ci se considèrent comme distincts à la fois des Indiens et des Européens, mais néanmoins comme autochtones et, de ce fait, comme ayant droit à un traitement spécial, au même titre que les Indiens. Lorsque, en 1869-1870, ils constatent qu'ils sont en réalité laissés pour compte, ils forcent l'attention du gouvernement canadien en interdisant l'entrée de la colonie de Rivière-Rouge au chargé d'affaires délégué par les autorités pour administrer le territoire.

Jusqu'à cette époque, les Métis n'ont encore jamais été considérés en tant que groupe, mais, en 1870, le Parlement du Dominion ratifie l'Acte du Manitoba,

qui prévoit, entre autres, l'octroi de terres aux descendants des chefs de famille métis du Manitoba et fonde en droit le statut indigène du Métis. Par la suite, les modalités de distribution des parcelles seront élargies pour englober les chefs de famille, auxquels on donne le choix entre une concession de 160 acres (à choisir dans une région ouverte à la colonisation) et une attestation négociable (certificat de concession) leur donnant le droit d'acquérir une superficie de terrain équivalente; cette disposition fera le jeu des spéculateurs. Les Métis du Nord-Ouest résidant à l'extérieur du Manitoba ne sont, eux, pas couverts par la nouvelle législation et rien ne sera fait, dans les années 1870, pour satisfaire à leurs revendications, alors qu'un certain nombre de traités seront conclus avec les Indiens de la région pendant la même période. Et si, en 1879, l'Acte des terres fédérales autorise la concession de terres aux Métis dans ce qui constitue alors le territoire du Nord-Ouest, cette disposition ne sera pas appliquée avant 1885, date à laquelle la possibilité d'une rébellion des Indiens et des Métis devient sérieuse. Tout comme l'Acte du Manitoba quinze ans plus tôt, la commission Street, alors instituée pour étudier les demandes de concessions des Métis, est donc avant tout un instrument de pacification. Finalement, les réclamations seront satisfaites par l'octroi de certificats de concession dans toute la région sur laquelle les Indiens ont renoncé à leurs droits aux termes d'un traité antérieur.

Les différentes méthodes mises au point pour traiter avec les Indiens et les Métis, d'abord appliquées au Manitoba, sont ainsi généralisées à l'ensemble de l'Ouest «intérieur» et, en 1899, étendues au Nord, où deux commissions sont chargées de négocier séparément avec les deux communautés, qui cohabitent dans la région couverte par le Traité nº 8. Ce sont encore ces principes qui sont repris pour les Traités nºs 10 et 11, à la différence que, cette fois, les négociateurs du traité avec les Indiens font aussi fonction de commissaires aux titres pour les Métis.

Les Métis fondent leurs revendications sur les mêmes hypothèses générales que les Indiens de plein droit, savoir le droit des autochtones à la terre. Pourtant, dans l'Ouest, ce n'est qu'exceptionnellement que les premiers sont inclus dans les traités conclus avec les seconds. Encore cela ne vaut-il que pour ceux que l'on estime les plus proches des Indiens, même si une certaine liberté de choix est tolérée. Au demeurant, la Loi sur les Indiens de 1876 les en exclura spécifiquement, à moins de circonstances exceptionnelles, que les modifications ultérieures de la législation supprimeront d'ailleurs complètement.

L'Acte du Manitoba pose les premiers jalons d'une politique visant l'aliénation totale des droits des Métis qui diffère sensiblement de celle que l'on a appliquée dans le cas des Indiens. D'une part, aucune négociation ne précède sa définition entièrement unilatérale, ni son application, fondée sur des textes de loi et des décrets; d'autre part, bien qu'il considère les Métis comme autochtones et, par conséquent, comme différents des autres Canadiens, le gouvernement ne manifestera jamais aucune intention de leur conférer et de leur garantir un statut spécial, semblable à celui des Indiens. Le dominion n'élargira jamais aux Métis et aux Indiens non inscrits les responsabilités particulières permanentes qui lui incombent à l'égard des Indiens de par son mandat constitutionnel.

Les revendications des Métis sont, pour la plupart, de trois ordres. Certaines portent sur l'injustice et l'inefficacité ayant marqué les distributions de terres et de certificats de concession prévues, en particulier, par l'Acte du Manitoba. Ce à quoi il convient d'ajouter que cette forme de compensation pouvait d'autant moins éteindre les droits naturels des Métis, que rares furent ceux qui tirèrent profit de la vente de leur certificat, argument que l'on peut du reste rapprocher de celui d'autres groupes ayant signé des traités qu'ils considèrent imposés et injustes en raison de l'insuffisance des dédommagements accordés. Ces revendications se trouvent renforcées du fait que les Métis résidant ailleurs que dans l'Ouest «intérieur» n'ont en général reçu aucune compensation et que, dans plusieurs régions, en Colombie-Britannique et dans le Yukon notamment, c'est conjointement avec les Indiens de plein droit qu'ils font valoir leurs droits. Cette situation contribue à renforcer la troisième revendication, à savoir: que les Métis sont des Indiens aux termes de l'Acte de l'Amérique du Nord britannique sinon en vertu de la Loi sur les Indiens, et qu'ils sont de ce fait en droit d'attendre un traitement spécial du gouvernement fédéral.

Revendications des bandes

Cette troisième grande catégorie recouvre les multiples revendications individuelles des diverses bandes d'Indiens, dont plusieurs émergent actuellement, notamment celles qui ont trait à la perte de terres ou d'autres ressources naturelles situées dans les limites des réserves et à la façon dont le gouvernement a procédé à la gestion des biens financiers des bandes par le passé. Questions d'autant plus délicates qu'elles soulèvent tout le problème du régime de tutelle.

Ce n'est qu'aujourd'hui qu'on parvient peu à peu à reconstituer avec précision la manière dont le gouvernement s'est acquitté de la gestion des ressources naturelles et financières des réserves et des bandes, à partir des dossiers du ministère, des missionnaires et de certaines autres sources, d'une part, et, d'autre part, grâce aux témoignages oraux des Indiens eux-mêmes. Les ressources naturelles n'englobent pas seulement la terre elle-même, mais aussi bien les minéraux, les bois, les pâturages et l'eau. Dans la plupart des cas, c'est du reste de leur vente que proviennent les revenus des bandes. Là où les terres des réserves ont été cédées ou vendues, l'argent recueilli a servi à alimenter les coffres des bandes, fonds qu'administre le gouvernement fédéral.

Les pertes de terres situées à l'intérieur des limites des réserves indiennes sous-tendent la grande majorité des revendications présentées jusqu'ici et sont, du moins pour certains groupes, probablement assez semblables pour que l'on puisse les classer par région ou période historique. Aussi, les griefs que l'on relève en Nouvelle-France ont-ils certains traits communs, comme c'est le cas des revendications des Indiens des Maritimes, du Haut-Canada (ou Ontario), du Sud des Prairies ou de Colombie-Britannique. Le thème central en est toujours le problème des pressions exercées par les spéculateurs et les premiers colons pour faciliter l'acquisition de certaines parties des réserves.

Les Français, premiers Européens à contrôler les destinées de la moitié septentrionale de l'Amérique du Nord, sont aussi les premiers à arrêter une manière de politique indienne au Canada. Leurs méthodes sont modelées par l'éloignement de la métropole, la supériorité du potentiel militaire des autochtones, les impératifs d'une économie fondée sur le commerce des fourrures et la très faible densité du peuplement européen. Si c'est en vain qu'ils essaient de franciser les Indiens, ils considèrent toutefois les autochtones convertis comme égaux, sur le plan civil et juridique, aux Français de souche.

La question de savoir si le régime français a confirmé ou éteint les droits territoriaux des Indiens est très controversée; ce qui est certain, c'est qu'aucun traité n'a jamais été conclu ni en Nouvelle-France ni en Acadie et qu'Indiens et colons blancs recevaient leurs terres de la même façon, par décision royale. A cette différence près, cependant, qu'au lieu de les donner directement aux indigènes, le pouvoir charge les agents de civilisation et de christianisation les plus efficaces de l'époque, les congrégations, de les administrer en fidéicommis. Six réserves indiennes sont ainsi créées.

Au moment de la conquête britannique, en 1760, les tribus alliées à la France se voient garantir l'usage de leurs terres; en 1851, 230,000 acres sont affectées à la constitution de réserves et, en 1922, 330,000 acres supplémentaires viennent s'y ajouter après le vote de la Loi des terres et forêts du Québec. D'autres réserves sont établies par le biais de transferts de terres provinciales aux autorités fédérales, soit par lettres patentes émises par le gouvernement de Québec, soit par achat direct de propriétés privées par le dominion, soit encore par signature d'un bail.

Depuis des années, les autochtones du Québec tentent de se faire accorder des indemnités plus substantielles en compensation de la perte de certaines terres qui faisaient à l'origine partie des réserves, d'obtenir le règlement de litiges opposant les unes aux autres certaines tribus et bandes au sujet de la propriété de certaines réserves et de se faire indemniser, d'une part, pour les dommages causés par l'exploitation forestière, la pêche et la construction de canaux, d'autre part, pour les déficiences constatées dans la gestion des fonds des bandes. Du fait même de leur existence, ces griefs laissent percer le caractère fondamental de la différence de point de vue entre les Indiens et le gouvernement fédéral, qui, depuis toujours, tend à ne trancher ces questions qu'en fonction du mérite juridique que leur trouve le ministère de la Justice.

Au XIX[e] siècle, par exemple, personne ne prête la moindre attention aux Hurons de Lorette et aux Montagnais de Pointe-Bleue lorsqu'ils s'élèvent contre l'occupation «sauvage» des sols par les blancs; c'est à peine si l'on considère les accusations selon lesquelles la municipalité voisine de la réserve iroquoise d'Oka se serait injustement approprié les terres nécessaires à la construction de trois routes et l'on fait peu de cas de la plainte de la réserve de Caughnawaga contre la vente de terres faisant soi-disant partie d'une réserve dite «ecclésiastique». Les Iroquois de Saint-Régis n'ont pas plus de chance lorsqu'ils protestent contre la décision unilatérale du gouvernement québécois de renouveler les baux de location

de certaines îles du Saint-Laurent, voire de les vendre, que lorsqu'ils demandent à être compensés pour la submersion d'autres îles lors de la construction du canal de Cornwall. Plusieurs dizaines de revendications relatives à des îles, datant du XVIII[e] ou du XIX[e] siècle, demeurent ainsi sans réponse aujourd'hui, et un grand nombre des litiges actuels ont pour cause des expropriations, imputables tantôt aux premiers colons, tantôt au clergé ou à la Couronne, contestées depuis cette époque. Le manque de réceptivité du gouvernement et des tribunaux s'explique en grande partie par le fait que les institutions refusent systématiquement d'admettre la thèse indienne, selon laquelle c'est aux autochtones qu'appartenaient en réalité les terres confiées aux congrégations, sous prétexte que c'est directement aux religieux et non aux Indiens que les titres en question ont été donnés.

Aux dires des Indiens, l'arrivée des Anglais n'améliore en rien la condition des autochtones en Nouvelle-France ni dans les Maritimes. Dans un premier temps, on conclut des traités et des ententes, mais bien plutôt pour limiter l'extension des nouveaux établissements européens que pour trancher la question des territoires indiens. Et si, à mesure que s'amplifient la colonisation et la puissance britanniques, les autorités délimitent de vastes territoires qu'elles destinent à une occupation et à une économie indiennes, et les intitulent «réserves», la possession de ces terres n'est garantie par aucun traité, ce qui leur vaudra de rétrécir sous l'effet des besoins de la colonisation.

Au début du XIX[e] siècle, devant les nouvelles pressions que subissent les réserves des Maritimes et de la recrudescence des occupations, par les pionniers blancs, de sols sur lesquels ils n'ont aucun droit, le gouvernement décide de charger des commissaires de veiller sur les réserves. Manifestement, ces fonctionnaires sont habilités à en vendre les terres sans le consentement des Indiens, car ils ne se privent pas de le faire. Avec la création de l'État confédéral, les réserves existantes tombent dans le champ de compétence fédéral, même si pendant longtemps la justification des titres conserve sa nature provinciale.

Dès lors qu'il prend en charge les réserves, c'est au gouvernement fédéral que sont adressées les revendications portant sur les aliénations antérieures de terres ayant fait partie des réserves. On voit de nos jours émerger plusieurs grands types de revendications de cet ordre, et tout d'abord un grand nombre de plaintes mettant en doute la légalité ou la valeur juridique des cessions de parcelles de réserves. On trouve notamment dans cette catégorie celles qui arguent de cessions autorisées sans le consentement en bonne et due forme des Indiens, de ventes dont toutes les conditions n'ont pas été remplies, d'acquisitions effectuées avant que la cession ait été officialisée, de l'absence de lettres patentes attestant de la transaction ou d'usage de faux. En Nouvelle-Écosse, une revendication globale a également été présentée, qui met en doute la légalité de toutes les cessions de terres conclues entre 1867 et 1960; elle se fonde sur le fait que les Micmac de cette province forment une seule et même bande et que, aux termes des lois concernant les Indiens, pour être valables, les cessions doivent obligatoirement être décidées lors d'une assemblée de la majorité des membres de la bande réunissant les conditions fixées du point de vue du sexe et de l'âge.

Une autre catégorie de revendications repose sur l'affirmation selon laquelle, après leur passage sous contrôle fédéral, à l'époque de la création de la Confédération, la superficie d'un certain nombre de réserves aurait été consignée ou calculée par le ministère des Affaires indiennes comme inférieure à leur étendue antérieure, voire sur le fait que les relevés topographiques d'usage ou les reports d'écritures indiquant l'existence d'une réserve auraient été oubliés.

Toujours dans les Maritimes, la tutelle fédérale fait l'objet d'autres plaintes encore. L'Union des Indiens de Nouvelle-Écosse a déposé un grand nombre de plaintes pour mauvaise administration, alléguant que le gouvernement ne remplit pas convenablement l'obligation qu'il a de garantir le versement d'une juste et suffisante compensation lorsque la construction de routes, la viabilisation des terrains ou d'autres travaux d'intérêt public rendent nécessaires la cession ou l'expropriation de terres faisant partie des réserves.

Dans le Sud ontarien, les mêmes causes produisent les mêmes effets que dans le Québec et les Maritimes. Il semble cependant que, dans cette région, la majorité des revendications n'ait pas encore fait surface, ou, du moins, qu'aucun cahier de doléances exhaustif n'ait encore été officiellement présenté. Cela n'empêche pas que, tout comme dans le Québec, les plaintes déposées en raison de pertes de terrains y sont légion. Et si certaines d'entre elles ont d'ores et déjà été rejetées par les ministères des Affaires indiennes et de la Justice, ou par les tribunaux, maintes autres attendent un règlement. Ces plaintes, ou encore les nouvelles revendications qui peuvent en découler, vont peut-être bientôt se faire plus nombreuses.

Si l'on en croit les Indiens, les cessions ratifiées dans des conditions injustes et les expropriations dont la légalité peut être mise en doute, mais auxquelles le gouvernement a procédé, sont loin de représenter l'exception. Comme à l'accoutumée, la conjonction des mesures gouvernementales et des pressions exercées par les spéculateurs et les colons blancs y ont joué un rôle déterminant. Les exemples les plus significatifs cités à l'appui de cette thèse sont les cessions de la Grande-Rivière par les Six-Nations en 1841, du *township* de Tyendinaga par les Mohawk en 1843, du *township* de Moore par les Chippewa un peu plus tard dans le courant de la même année et du comté de Glengarry par les Iroquois de Saint-Régis en 1847. Ces terres ont été cédées en fidéicommis, mais il y a lieu de croire que toutes les dispositions des ententes n'ont pas toujours été respectées. Des plaintes semblables ont été déposées au sujet de l'acquisition, par le gouvernement, d'îles non cédées. D'autres, tout aussi répandues, ont trait à un genre spécial d'expropriations, qui permettait la vente de certaines parcelles de réserves pour satisfaire aux besoins du clergé et de l'État. Ce à quoi viennent s'ajouter les différends quant au statut légal de certains territoires, problème qui découle généralement de l'installation illégale de pionniers et qui, parfois, provoque des conflits entre tribus au sujet de la propriété des terres et, par conséquent, du droit aux indemnités annuelles.

Les facteurs économiques et sociaux qui sous-tendent les pertes de territoires de réserves dans le Centre et dans l'Est du Canada ne tardent pas à se manifester

dans les Prairies. En effet, dans les années qui suivent la conclusion des traités et la constitution des réserves, la partie méridionale des Prairies est progressivement colonisée. Parfois, c'est aux limites des réserves que s'implantent villes et villages; il arrive même qu'elles en soient encerclées. Les voies ferrées les traversent ou les longent. Comme en Ontario, les pionniers convoitent les réserves situées sur les meilleures terres arables. Pour toutes ces raisons, les pressions politiques visant à faire ouvrir aux colons la totalité ou certaines parties des réserves se multiplient, et, dans bien des cas, c'est le ministère des Affaires indiennes qui organise la cession des terres en question; le produit de la vente est alors versé au crédit de la bande, fonds administré conformément aux dispositions de la Loi sur les Indiens.

Les bandes et associations indiennes des Prairies ont, ces dernières années, formulé plusieurs plaintes fort claires au sujet de la politique antérieurement pratiquée par les autorités en matière de cessions territoriales. Elles étudient à l'heure actuelle les justifications générales avancées à l'époque ainsi que la légalité et le bien-fondé de cessions particulières, notamment des trois ententes passées avec la bande d'Enoch, des environs d'Edmonton. Dans un premier temps, la réserve Passpasschase est cédée, peu de temps après que la plupart des membres de la bande ont renoncé à leur statut d'Indiens assujettis au traité et accepté des concessions réservées aux Métis; dans un deuxième temps, les membres restants, réinstallés ailleurs, sont regroupés (en même temps que leurs fonds) au sein de la bande d'Enoch qui habite la réserve de Stony Plain; enfin, en 1902 et 1908, un groupe de pression bénéficiant de l'appui du ministre responsable des Affaires indiennes lui-même, pour ne pas dire organisé par lui, force la cession de certaines parties de la réserve. Il semble bien que les agents du gouvernement aient en l'occurrence usé de méthodes d'une moralité et d'une légalité douteuses. Or, ce sont des questions de ce genre que soulèvent nombre de cessions touchant les Prairies et le Nord ontarien.

Dans les régions septentrionales des Prairies, les revendications indiennes s'articulent autour du problème du non-respect des droits territoriaux reconnus par traité. Problème extrêmement complexe en soi, mais que complique encore dès le départ la nécessité de faire approuver par le gouvernement provincial toute constitution de réserve. Bien que, par les accords de 1930 sur les transferts de ressources naturelles, les trois provinces des Prairies se soient engagées à faire passer sous contrôle fédéral des superficies de terres de la Couronne non peuplées suffisant à satisfaire aux obligations contractées par traité mais restées lettre morte, les autochtones ont le sentiment d'une réticence provinciale à honorer la parole donnée, ce qui donne lieu à certains démêlés quant à la nature exacte des promesses formelles. Ainsi, au Manitoba, les bandes de la région d'Island Lake soulèvent la question de savoir quelle base de population doit servir au calcul des compensations territoriales prévues par les accords; car si, en 1924, une bonne partie des dédommagements stipulés par le Traité nº 5 ont été obtenus, les superficies accordées sont inférieures de près de trois mille acres à ce qu'elles devraient être si l'on se fonde sur le chiffre de la population au moment de l'indemnisation et les termes du traité. Aujourd'hui, les bandes estiment que le paramètre «popu-

lation» doit être réactualisé et les surfaces transférées en 1924 simplement déduites du nouveau total des terres à distribuer.

Ce cas fait en outre ressortir les inégalités qui découlent des dispositions territoriales des divers traités signés dans l'Ouest. Comme d'autres dans le Manitoba, le Traité nº 5 prévoit l'octroi de 160 acres par famille de cinq, alors que dans certains cas, la compensation atteint 640 acres. Encore n'est-ce pas tout, puisque dans cette région la terre n'est pas arable, et qu'il en résulte une injustice supplémentaire si l'on compare cette indemnisation à celles qui sont accordées dans les régions du Sud, plus fertiles. Selon les bandes, une solution véritablement équitable, fondée à la fois sur le facteur «population» et l'uniformisation des clauses des traités, exigerait la distribution de quelque 300,000 acres.

L'histoire des réserves indiennes de Colombie-Britannique diffère considérablement de celle des autres provinces. Dans les années 1850, alors que la Compagnie de la Baie d'Hudson administre encore provisoirement l'île de Vancouver, son «facteur en chef», James Douglas, négocie quelques cessions de moindre importance. Pourtant, avec les zones de l'angle nord-ouest de la Colombie-Britannique continentale, cédées aux termes du Traité nº 8, ces territoires sont les seuls dont l'aliénation soit fondée sur les dispositions d'un traité. En 1858, sous Douglas, à la fois gouverneur des deux colonies que constituent alors l'île de Vancouver et la Colombie-Britannique, les autochtones se voient accorder des réserves relativement généreuses à l'intérieur comme à l'extérieur des territoires couverts par traité. Mais la poussée colonisatrice conduit ses successeurs à renoncer à la politique qui consiste à accorder aux tribus une étendue que les Indiens déterminent eux-mêmes en fonction de ce qu'ils jugent être leurs besoins et, par conséquent, à réduire la superficie des réserves chaque fois que faire se peut. Ce ne sera, par ailleurs, qu'à son corps défendant que l'administration coloniale constituera de nouvelles réserves dans les régions ouvertes à la colonisation.

Au moment où la colonie entre dans la Confédération, en 1871, de nombreuses plaintes font déjà état de l'insuffisance des réserves et de leur rétrécissement. Les conditions de l'Union, définies cette année-là, ne font cependant rien pour les apaiser. Le document se borne, pour l'essentiel, à prévoir le passage des réserves sous contrôle fédéral et le transfert de certains territoires provinciaux aux autorités d'Ottawa pour la constitution de nouvelles réserves. Toutefois, comme il n'arrête aucun chiffre, un conflit oppose les deux gouvernements dès qu'il s'agit de déterminer la superficie qu'il convient d'allouer à chaque famille. Pour la province, dix acres suffisent, alors que l'administration fédérale propose le chiffre de quatre-vingts. Et la création, en 1875, d'une commission des réserves indiennes chargée d'étudier la question, bien qu'approuvée de part et d'autre, n'empêchera pas la province de freiner la libéralisation des modalités régissant l'octroi des réserves.

Mais ce n'est là qu'une des sources de revendications; un rapport publié récemment par l'Association des chefs indiens de la Colombie-Britannique sous le titre *The Lands We Lost* en énumère d'autres. On y retrouve notamment les problèmes désormais classiques de l'occupation «sauvage» des terres par des non-Indiens, des nombreux relevés topographiques officiels et des travaux des com-

missions gouvernementales, des décrets fédéraux et des cessions de terres de réserve. L'une des causes essentielles de ces pertes et la principale plainte à leur sujet découlent des travaux de la commission fédérale-provinciale McKenna-McBride, chargée, en 1912, de régler le contentieux entre les deux gouvernements relativement à la question des territoires indiens en Colombie-Britannique et dont le mandat consiste à déterminer les besoins territoriaux des autochtones et à recommander la modification éventuelle des limites des réserves. Toutes les réductions de superficies doivent en principe être entérinées par les bandes concernées, mais il n'en est rien dans les faits. Ce qui n'empêche d'ailleurs pas les deux gouvernements d'approuver les recommandations et de voter les rétrécissements en dépit des dispositions relatives aux cessions de terres situées dans les limites des réserves stipulées par la Loi sur les Indiens. Quelque trente-cinq diminutions d'étendue, totalisant 36,000 acres, s'ensuivent; il est vrai que les superficies plus vastes sont par la même occasion ajoutées aux réserves, mais elles sont de qualité nettement inférieure.

II RÈGLEMENT DES REVENDICATIONS

Les tribunaux et commissions aux revendications

Ce n'est qu'exceptionnellement que la justice canadienne a eu à se prononcer sur des questions relatives aux droits des Indiens. De plus, hormis quelques exceptions, l'appareil judiciaire ne tranche en général pas favorablement ou pas suffisamment. En matière de droits indigènes, la magistrature a conclu que par le simple fait d'y avoir débarqué et d'avoir revendiqué au nom de leurs pays des contrées jusqu'alors inconnues en Europe, les représentants des puissances blanches ont automatiquement assuré la souveraineté de leur nation dans ces terres «nouvellement découvertes». Droit que l'occupation a confirmé. Et plutôt que d'envisager la question des obligations découlant de l'hypothèse de cette souveraineté, gouvernants et magistrats ont établi que les droits aborigènes relevaient de la prérogative des sociétés colonisatrices.

Les Indiens ont par ailleurs dû faire face à de fort imposants obstacles sociaux et culturels en tant que parties amenées à plaider dans un contexte juridique parfaitement étranger à leurs us et coutumes. Et, jusqu'à ces derniers temps, ceux qui d'aventure envisageaient d'intenter quelque action en justice ne disposaient que d'une infime partie, quand encore ils avaient cela, des sommes nécessaires pour engager une procédure. Il en résulte que la majorité des toutes premières décisions, partant les plus importantes, en matière de droits fondamentaux des autochtones ont été rendues alors que les Indiens n'étaient pas directement représentés. Bon nombre de ces jugements portaient sur le contentieux entre le fédéral et les provinces à propos des terres et des ressources naturelles, et la question des droits des Indiens n'y intervenait que parce que le gouvernement fédéral cherchait à s'appuyer sur eux pour renforcer sa propre position en faisant état de sa responsabilité constitutionnelle exclusive pour tout ce qui a trait aux affaires des terres et des peuples indiens.

Ce qui restera, jusqu'à très récemment, le seul cas important en matière de droit de propriété des autochtones au Canada est tranché par le Comité judiciaire du Conseil privé, en 1888, lors du procès, connu sous le nom d'*affaire des scieries de Sainte-Catherine,* qui oppose les gouvernements fédéral et de l'Ontario sur la question de savoir si celui-là peut délivrer des permis d'exploitation forestière dans des régions se trouvant, à toutes fins pratiques, sur le territoire de celui-ci; les Indiens ne sont pas représentés. Ottawa fonde sa thèse sur le fait qu'il a dûment acquis la propriété des terres indiennes, mais le Comité judiciaire refuse de reconnaître que les autochtones ont, à aucun moment, effectivement joui de la «propriété» de leurs terres au sens où les Européens entendent ce terme, et déclare «. . .que la tenure des Indiens est un droit personnel et usufructuaire ressortissant à la discrétion du Souverain». Et les lords magistrats de poursuivre en ajoutant que la signature des traités éteint ce «droit personnel et usufructuaire» et investit automatiquement la province de tout droit d'usufruit afférent aux terres couvertes par ces accords. Il faudra près d'un siècle pour que la question de la nature du droit de propriété des autochtones reçoive un examen plus approfondi de la part de la plus haute cour d'appel du pays.

Les tribunaux ont également statué sur la nature et les implications des traités. Trois interprétations au moins se le disputent en la matière. La première y voit une transaction entre nations distinctes et indépendantes; c'est celle qui fonde la revendication traditionnelle de bon nombre d'Indiens des Six-Nations. La deuxième les considère comme des ententes protectives spéciales, en vertu desquelles les Indiens abandonnent tout droit à la terre en contrepartie de droits irrévocables garantis par le gouvernement. La troisième les comprend plutôt comme n'accordant aux Indiens aucun droit autre qu'«une promesse et entente» analogue à n'importe quel contrat commercial signé par le gouvernement de l'époque. C'est pour la dernière qu'opte le Comité judiciaire du Conseil privé en 1897, lorsqu'il tranche, dans une décision écrite, un différend opposant les procureurs généraux du Canada, de l'Ontario et du Québec. Ainsi donc, avant même d'avoir commencé à faire valoir leurs propres arguments devant les tribunaux, les Indiens se trouvent face à une série de précédents défavorables.

Outre celle des droits en jeu dans cette affaire, la justice est également amenée à aborder la question des promesses concernant la conservation des droits de chasse et de pêche, et ce sont ses décisions qui confirmeront le droit du gouvernement fédéral de revenir sur des engagements solennels consignés dans les traités. Il arrive à l'occasion que la magistrature mette en doute la moralité de ce genre de procédé législatif, mais bon nombre des promesses les plus fondamentales contenues dans les traités et portant sur le développement social et économique n'ont pas encore fait l'objet d'un examen juridique, et il faudrait que les tribunaux rompent radicalement avec le précédent pour en venir à considérer ces obligations sous le même angle que les Indiens.

Les tribunaux ont quelquefois été saisis du problème des nombreuses revendications découlant de la perte de terres ayant fait partie des réserves, mais on peut difficilement préjuger de la façon dont la justice tranchera à l'avenir

dans ce domaine, tant il est vrai que l'on ne peut discerner aucune orientation générale nette dans les décisions antérieures. La même remarque vaut pour les revendications ayant trait à la mauvaise gestion des fonds indiens, au sujet desquelles les règlements judiciaires sont aussi rares et peu instructifs. Question pourtant fondamentale, le problème des rapports entre le gouvernement fédéral et les Indiens en matière de gestion des terres et des fonds indiens demeure donc tout à fait vague sur le plan juridique. Les Indiens considèrent ces rapports comme fondés sur un fidéicommis; et le gouvernement fédéral en a du reste fréquemment parlé en ces termes. C'est donc une obligation fiduciaire fort lourde qui en résulte pour les autorités, responsabilité qui leur impose d'agir de bonne foi et de toujours faire de la sauvegarde des intérêts des Indiens leur principale préoccupation.

Pour présenter leurs revendications, les Indiens doivent passer par un appareil juridique qui ne peut guère leur apparaître autrement que comme une machine totalement incompréhensible. Ce n'est que depuis quelques années que les tribunaux se sont mis à recevoir plus favorablement les plaintes des autochtones. Encore n'est-ce pas qu'ils aient commencé à trancher de façon complète ou satisfaisante; mais ils fournissent désormais aux indigènes un point de départ leur permettant d'envisager la réouverture des négociations avec le gouvernement.

La première tentative canadienne de règlement à l'amiable des plaintes indiennes prend la forme de la création par lois concomitantes, en 1890-1891, d'un conseil d'arbitrage de trois membres, un représentant du gouvernement fédéral et un pour chacune des provinces, chargé d'étudier le contentieux entre le dominion, l'Ontario et le Québec et d'analyser les responsabilités incombant à chaque palier de gouvernement en matière d'affaires indiennes. C'est le ministère des Affaires indiennes qui se charge de présenter les revendications indigènes. L'idée-force de son argumentation veut que, jusqu'en 1867, ce soit à l'ancienne province du Canada et, après 1867, à l'Ontario ou au Québec qu'il appartienne de régler ces griefs. Quant à elles, les provinces affirment que l'obligation en incombe uniquement à la Couronne, agissant au nom du dominion.

Au total, le conseil aura à connaître de quelque vingt griefs, mais au cours de procédures où il subira la forte influence des opinions des juristes et administrateurs gouvernementaux. Le système s'avère du reste inefficace, les revendications s'enlisant dans les conflits fédéraux-provinciaux. Au demeurant, le conseil n'a aucun pouvoir décisionnel et dès les premières années du XX^{e} siècle, ne joue plus qu'un rôle insignifiant. Hormis quelques rares exceptions, donc, il n'a été d'aucune utilité aux Indiens.

Aux États-Unis, tant les Indiens que les Européens prennent peu à peu conscience du fait que l'appareil judiciaire normal est fort mal adapté à l'examen et au règlement des revendications des autochtones. Ce phénomène suscite, au Canada, un contrecoup qui va s'amplifiant aussi bien dans les milieux gouvernementaux que chez les Indiens. Chez nos voisins, les efforts déployés à partir de 1930 pour créer une instance spéciale, habilitée à connaître des revendications et à statuer, aboutissent, en 1946, à la création d'une commission des revendications des Indiens. Au Canada, les comités mixtes de la Chambre des communes et du

Sénat de la Loi sur les Indiens et des Affaires indiennes (qui siégèrent respectivement de 1946 à 1948 et de 1959 à 1961) recommandent la création d'un organisme semblable, mais doté de pouvoirs plus limités. La loi autorisant sa création sera présentée à la Chambre des communes en première lecture en décembre 1963 et, après avoir été envoyée pour examen aux organismes indiens, conseils de bande et autres groupes concernés, une version légèrement modifiée de ce texte sera déposée devant le Parlement en juin 1965.

Le projet de loi prévoit notamment la nomination d'une commission d'étude des revendications des Indiens de cinq membres (dont un Indien), présidée par un juge ou avocat exerçant depuis au moins dix ans. La compétence de la commission doit cependant se limiter aux actes ou omissions imputables à la Couronne agissant au nom du Canada ou de la Grande-Bretagne, mais pas au nom d'une province. Pour ce motif, mais aussi du fait des modalités d'établissement de la preuve, de fortes suspicions pèsent sur sa capacité à juger des mérites de la question du droit de propriété des autochtones, alors en litige en Colombie-Britannique et qui constitue pourtant l'une des principales raisons ayant conduit à la création de la commission.

Par ailleurs, la commission ne doit pas avoir compétence dans certains domaines qui constituent pourtant l'essentiel des problèmes que son homologue américaine est appelée à trancher. C'est le cas notamment des revendications arguant de cas où le gouvernement a manqué d'agir «avec justice ou honorablement» dans la résolution de questions d'ordre territorial et des plaintes demandant la réouverture des traités en raison d'agissements peu scrupuleux. Le projet de loi canadien n'habilite la commission qu'à se pencher sur les manquements au respect des conditions des traités, et non à s'adresser au problème de leur renégociation. Qui plus est, il ne tient aucun compte des associations indiennes qui représentent, à l'époque, une force montante. Bien plus, la commission doit être autorisée à recevoir les revendications émanant de bandes (au sens où la Loi sur les Indiens entend ce terme), mais rien ne garantit qu'elle examinera celles que pourraient lui adresser les organismes indiens régionaux. Enfin, elle ne pourra accorder que des indemnités pécuniaires, en aucun cas des dédommagements territoriaux.

Ces lacunes et d'autres déficiences expliquent l'opposition que le projet de loi suscite chez les Indiens. En deuxième lecture, il est renvoyé aux comités mixtes des deux chambres du Parlement où on le laissera mourir à la dissolution de la Chambre, un peu plus tard dans le courant de 1965. Plus rien ne sera fait pour instituer une commission, bien que le gouvernement semble toujours en manifester l'intention. En septembre 1968, le ministre des Affaires indiennes va jusqu'à déclarer qu'il se propose de présenter «d'ici quelques semaines» un nouveau projet de loi visant à établir une commission d'étude des revendications des Indiens et à réitérer cette déclaration en décembre de la même année. Il fait toutefois remarquer à cette dernière occasion que le projet de loi a été renvoyé au Comité du Cabinet sur l'hygiène, le bien-être et les services sociaux pour modification. C'est apparemment la dernière discussion publique sur ce thème qui ait

précédé l'annonce de la nouvelle politique indienne, en juin 1969. La «disparition» du projet sera mise au compte des consultations qui ont eu lieu avec les représentants des Indiens et du réexamen de la politique indienne qui a précédé la mise au point du nouveau Livre blanc.

Le Livre blanc de 1969 – Nomination d'un commissaire aux revendications des Indiens

Le Livre blanc sur la politique indienne, publié en 1969, constitue la première de la série des réactions contemporaines aux revendications indigènes et marque le début d'une période d'activité d'une intensité sans pareille dans l'histoire de leur examen. Le gouvernement y présente une stratégie qui, selon lui, doit aboutir à égaliser les chances de chacun, en instituant «. . . une égalité qui conserve et enrichisse leur identité, égalité qui mette l'accent sur la part qu'ils prendront eux-mêmes à sa création et qui se manifestera dans tous les aspects de leur vie». A cette fin, l'Acte de l'Amérique du Nord britannique serait modifié en vue de mettre un terme à la distinction établie par la loi entre les Indiens et les autres Canadiens; la Loi sur les Indiens serait abrogée; les Indiens prendraient progressivement le contrôle des destinées de leurs propres terres. Parallèlement, la Division des Affaires indiennes serait dissoute et les services auparavant assurés selon un régime spécial seraient dorénavant fournis aux autochtones et aux autres Canadiens par les mêmes organismes fédéraux et provinciaux. Pendant la phase d'adaptation, des crédits seraient alloués au titre de l'expansion économique. Bref, les Indiens se retrouveraient sur le même pied que les autres Canadiens et leur statut particulier s'éteindrait.

Ces propositions n'empêchent pas le gouvernement de reconnaître l'existence d'un contentieux; il suggère du reste la création d'une commission d'étude des revendications des Indiens, en ne lui prévoyant toutefois qu'un rôle consultatif. De toute évidence, le gouvernement n'est pas disposé à agréer les revendications afférentes aux droits aborigènes. Ainsi peut-on lire dans le document: «Ceux-ci sont tellement généraux qu'il n'est pas réaliste de les considérer comme des droits précis, susceptibles d'être réglés excepté par un ensemble de politiques et de mesures qui mettront fin aux injustices dont les Indiens ont souffert comme membres de la société canadienne. C'est la politique que le Gouvernement présente pour discussion.» Et s'il fait état des revendications fondées sur les traités, c'est sous un éclairage plutôt douteux: «Les termes et les effets des traités entre les Indiens et le Gouvernement sont le plus souvent mal compris. Il suffit d'en prendre connaissance pour constater qu'ils ne comportent guère qu'un minimum de promesses, promesses généralement très restreintes . . . Les traités, en ce qui a trait à l'instruction, à l'hygiène et à l'assistance n'ont jamais revêtu une grande importance et cette situation n'est pas susceptible de changer . . . Dès que les terres indiennes tomberont sous le contrôle des Indiens, l'anomalie de traités entre certains groupes à l'intérieur de la société et le gouvernement de cette société rendra nécessaire une révision de ces traités afin de les mettre à jour de façon

équitable.» C'est que le gouvernement semble être d'avis que si les principales revendications qui ont trait aux droits aborigènes et aux traités sont peu justifiées et sont même en contradiction directe avec la politique proposée, certaines plaintes pourraient être admises. Les obligations légales seraient, elles, reconnues.

Cependant, plutôt que de procéder comme dans les années 1960 et de créer une commission semblable à la précédente, le gouvernement opte pour une étude et des recherches plus approfondies, auxquelles participeront les Indiens. Il s'ensuit que la formule retenue place la commission sous le régime de la Loi sur les enquêtes et lui enjoint de consulter les Indiens et de procéder à l'examen des revendications découlant des traités, ententes officielles et mesures législatives. Le Commissaire se voit, lui, chargé de déterminer et de faire savoir au gouvernement quelles catégories de revendications méritent une attention particulière et de recommander des méthodes de règlement.

Connaissant la façon dont les Indiens conçoivent leurs droits et leurs revendications comme on la connaît maintenant, on ne peut guère s'étonner de la vigueur de leur réaction. La Fraternité nationale des Indiens s'élève immédiatement contre le Livre blanc dans une déclaration où l'on relève notamment: «. . . Les propositions du ministre des Affaires indiennes sont absolument inadmissibles . . . Aux yeux des Indiens du Canada, cette politique n'est rien d'autre qu'une manœuvre visant à les priver de leurs droits aborigènes, résiduels et légaux. L'accepter, et perdre de ce fait et nos droits et nos terres, équivaudrait pour nous à nous faire les complices volontaires d'un génocide culturel. Et cela, nous ne le pouvons pas.»

Au cours des mois suivants, c'est le même écho qui, avec la même vigueur, monte des groupes autochtones de toutes les régions. Lorsque M. Lloyd Barber est nommé Commissaire, en décembre 1969, la Fraternité nationale des Indiens refuse de le reconnaître, voyant dans la création de ce poste le prolongement direct du Livre blanc qu'elle a catégoriquement rejeté et une tentative faite par le gouvernement pour imposer sa politique aux autochtones. Pour les Indiens, le Livre blanc n'est qu'un nouvel avatar de la politique d'assimilation à laquelle ils s'opposent depuis si longtemps et ils dénoncent donc la proposition comme une extension particulièrement dangereuse et lourde de conséquences de la politique indienne toujours pratiquée au Canada.

En faisant cause commune pour relever ce qui leur semble un défi à leurs droits, les autochtones exposeront à leur tour leur position dans une série de déclarations. Et s'ils éprouvent certaines difficultés pour constituer un fonds de recherche, des sommes suffisantes leur sont fournies par le gouvernement pour financer une partie de ce travail. Les déclarations qui en découlent, renforcées par une action politique et juridique concertée amèneront les autorités à modifier sensiblement leur façon d'envisager le problème.

L'une des premières réactions est enregistrée en août 1971 lorsque, dans sa réponse à certains documents produits par la Commission et les chefs indiens, le Premier ministre admet que ce ne serait pas, pour le Commissaire, outrepasser ses attributions que d'accepter «d'entendre les nouveaux griefs que les Indiens souhai-

tent formuler. Ainsi, le gouvernement pourra par la suite déterminer s'il ne devrait pas recourir à certaines lignes de conduite ou à certaines façons de procéder qui n'ont pas déjà été envisagées.» Réponse que le Commissaire interprète comme lui donnant toute latitude pour se pencher sur la question des griefs et revendications, y compris le problème des droits aborigènes.

Au mois d'août 1973, le gouvernement modifiera du reste sensiblement sa position au sujet de ces droits en annonçant sa volonté d'en négocier le règlement dans les nombreuses régions où le problème n'a jamais été abordé. Et, en avril 1975, se fondant sur des propositions établies au cours de consultations entre les chefs indiens et le Commissaire, il consent à s'en remettre, pour l'examen des revendications des Indiens, à une stratégie reposant sur la négociation.

Droits aborigènes

Dans les régions du Canada non couvertes par traité, les critiques à l'adresse du Livre blanc s'articulent autour de deux pôles: d'une part, la proposition de transfert des responsabilités en matière d'affaires indiennes du gouvernement fédéral aux provinces; d'autre part, le refus, apparent dans le document, de recevoir et d'aborder la question des revendications relatives aux droits aborigènes. Aussi voit-on, par exemple, l'Union des Indiens du Nouveau-Brunswick rejeter en bloc la politique proposée et les Indiens du Québec déclarer par l'entremise de leur association qu'ils en contesteront l'application tant qu'un traité n'aura pas été conclu avec eux. Ces réactions sont suivies, en septembre 1971, de la publication par des représentants des Indiens du Canada tout entier d'une position de principe fort concise sur «les dimensions territoriales des revendications indiennes fondées sur les droits aborigènes», texte qui recevra un peu plus tard l'appui d'un comité parlementaire permanent, en période de gouvernement minoritaire, mais qui ne sera jamais mis aux voix à la Chambre des communes.

En juillet 1972, l'Union des chefs indiens de Colombie-Britannique contre vigoureusement la fin de non-recevoir qu'oppose le gouvernement aux revendications portant sur les droits aborigènes dans une plaquette intitulée *Claim Based on Native Title,* où elle demande au Premier ministre et au gouvernement du Canada:

> . . . d'imaginer quel choc ce fut pour les Indiens, et particulièrement pour ceux de Colombie-Britannique, que de s'entendre dire en 1969 que les griefs relatifs aux revendications reposant sur le droit des autochtones (aborigènes) à la terre «sont tellement généraux qu'il n'est pas réaliste de les considérer comme des droits précis susceptibles d'être réglés», hormis par le biais de la nouvelle politique, alors proposée, qui, à moins de modifications, refusait catégoriquement d'admettre ces revendications historiques.
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> En effet, que ce soit en tant que particuliers ou en tant que groupes, les Indiens de Colombie-Britannique revendiquent depuis des générations une compensation, des ajustements ou une restitution du fait qu'on leur dénie, sans qu'ils y aient consenti et sans qu'on les ait dédommagés, leurs droits traditionnels sur les terres qui leur appartenaient.

La déclaration réclame par ailleurs le dédommagement des autochtones pour l'aliénation de leurs droits à la terre sur toute l'étendue de la Colombie-Britannique, y compris les droits afférents aux sols, aux sous-sols, aux rivages et aux lais. Cette revendication s'appuie entièrement sur le concept de droits aborigènes, qu'elle justifie par de longs développements. Elle établit néanmoins une distinction entre le droit de propriété pur et simple, dont arguent alors devant les tribunaux certains Indiens de Colombie-Britannique, et sa propre conception, qui veut que les Indiens aient, avant la venue des colons non indiens, eu des droits territoriaux dont ils se voient à l'heure actuelle refuser la jouissance, notamment en matière d'occupation et d'utilisation des sols, jouissance à laquelle leur qualité de «propriétaires» leur donne droit. De ce fait, hormis en matière de chasse et de pêche, la revendication se traduit surtout par une demande de compensation, et non de restitution.

L'UCICB ne considère par ailleurs pas le recours aux tribunaux comme un moyen acceptable d'arriver à une solution et déclare que pour le règlement du contentieux, seul le gouvernement et le Parlement peuvent, soit par la voie législative, soit en nommant une commission habilitée à trancher, traiter efficacement la question. Et si les deux solutions lui paraissent acceptables, l'Union des chefs penche plutôt pour la seconde. Depuis, cependant, on en est venu à réserver un meilleur accueil à l'idée de négociations directes. La fonction de la commission chargée de statuer aurait été de déterminer le montant des compensations à verser dans chaque cas. Le droit de propriété des indigènes aurait été reconnu aux termes mêmes de la loi créant la commission, évitant du même coup les pertes de temps qu'aurait entraînées, pour les Indiens, la nécessité pour chaque groupe de prouver l'existence et l'étendue de ses droits. L'objectif serait à présent d'examiner la possibilité de restitutions, tout spécialement en matière de droits de chasse et de pêche et de droits aux rivages et aux lais, en y ajoutant, dans la plupart des cas, une indemnité pécuniaire pour l'aliénation des autres droits.

Aux termes de cette proposition, la valeur des terres serait celle qu'elles avaient au moment où les Indiens en ont été dépossédés: à la date d'entrée en vigueur des traités dans les régions de Colombie-Britannique relevant de ce traité, à la date de constitution des réserves dans les autres. Cette valeur serait ensuite convertie en dollars courants et l'indemnité assortie d'un intérêt annuel simple de cinq pour cent. Le fonds ainsi constitué serait géré par une société de développement provincial appartenant aux Indiens et dirigée par eux. Selon ses auteurs, cette formule devrait non seulement permettre de résoudre les griefs antérieurs, mais jeter les bases du développement économique et social des communautés indiennes de la province.

Mais bien avant que ne soit publiée cette revendication territoriale intéressant la Colombie-Britannique, les Nishga du Nord-Ouest de la province tentent d'obtenir des tribunaux qu'ils déclarent que leur droit de propriété n'a jamais été éteint ni par traité ni d'aucune autre façon. L'*affaire Calder—Procureur-général de la Colombie-Britannique* arrive pour la première fois devant la Cour suprême de Colombie-Britannique en 1969. Déboutés, les Nishga le seront à nouveau par la Cour d'appel de la province avant de porter l'affaire devant la Cour suprême du

Canada en janvier 1973. Là, ils perdront à nouveau, mais par quatre voix contre trois et non sans que six des magistrats n'appuient le concept du droit de propriété des indigènes «à la discrétion du Souverain». La question fondamentale de savoir comment déterminer ou éteindre ces droits restera cependant, faute d'une position commune, sans réponse.

Pour trois des juges, les droits aborigènes n'ont de valeur que dans la mesure où le gouvernement contracte l'obligation d'indemniser les intéressés en votant une loi à ce sujet et peuvent être éteints implicitement par toute mesure législative intéressant les sols puisque, en l'occurrence, la ratification de ces textes revient à en nier l'existence. Pour les trois autres, par contre, les droits aborigènes ne sauraient être abolis sans compensation, à moins qu'une loi ne soit votée pour écarter spécifiquement toute possibilité de dédommagement. Selon ces trois magistrats, l'occupation de fait atteste de la conservation des droits aborigènes; or, il semble que les Nishga soient en possession des terres de la vallée de la Nass depuis toujours et ces Indiens n'ont jamais signé aucun traité de cession avec la Couronne.

Les Nishga perdent le procès pour un point de procédure accessoire, savoir: que la cause ne peut être entendue sans que la province y ait formellement consenti. Il s'ensuit que la question, cruciale, de savoir si les Nishga, et tous les autres autochtones dont les revendications sont analogues, peuvent ou non faire état de droits aborigènes n'a pas encore été tranchée par les tribunaux. Et que l'on ne sait toujours pas ce qu'est au juste le droit de propriété des indigènes, ce qu'il vaut, la façon dont il peut être éteint et ce qu'il faut, au niveau de la preuve, pour assurer la validité d'une revendication en la matière.

La décision de ne pas poursuivre l'affaire devant la justice semble être venue du gouvernement et devoir s'expliquer en majeure partie par un revirement. S'adressant à une délégation de l'Union des chefs indiens de Colombie-Britannique immédiatement après l'arrêt de la Cour suprême, le Premier ministre signale en effet que ce jugement l'a amené à modifier sa façon de voir. Apparemment impressionné par l'opinion de la minorité, il va même jusqu'à déclarer: «Légalement, vous avez peut-être plus de droits que nous ne le pensions lorsque nous préparions le Livre blanc.»

En même temps, et les autochtones et le gouvernement canadien ont pris connaissance de l'accord négocié entre les pouvoirs publics américains et les communautés indigènes de l'Alaska et qui a force de loi depuis décembre 1971. Rappelons que les Indiens, Inuit et Aléoutes, aiguillonnés par l'octroi de concessions de pétrole et de gaz, avaient commencé par revendiquer la quasi-totalité du territoire de l'État, qu'ils n'avaient jamais cessé d'occuper et d'utiliser, avec le résultat qu'en 1966 les sols avaient été bloqués jusqu'à ce que le contentieux ait pu être réglé. Cela aboutit au dépôt de plusieurs projets de loi d'origines diverses devant le Congrès et, en 1971, au vote de l'*Alaska Native Claims Settlement Act* (Loi sur le règlement des revendications des autochtones de l'Alaska), radicalement différente de toutes les mesures antérieurement adoptées en la matière, aux États-Unis et ailleurs.

Cette loi prévoit en effet la remise des terres et des fonds aux communautés autochtones et la constitution de sociétés indigènes appelées à les gérer. En vertu de ce texte, les autochtones de l'Alaska prennent en charge quarante millions d'acres (soit près de 15 pour cent de la superficie de l'État) réparties entre deux cent vingt villages et douze sociétés régionales, les premiers étant investis des droits afférents au sol sur vingt-deux millions d'acres, les secondes, des droits au sous-sol sur ce territoire et de tous droits sur seize millions d'acres supplémentaires. Les deux millions d'acres restantes sont affectées à des fins diverses, et notamment à la protection des sites funéraires et historiques. La législation stipule par ailleurs que ces territoires doivent permettre l'attribution d'un maximum de cent soixante acres par personne aux individus résidant à l'extérieur des villages. Parallèlement, elle institue une commission de planification de l'utilisation des sols où siège au moins un autochtone, mais dont le mandat reste strictement consultatif.

Sur le plan financier, la loi prévoit le versement, échelonné sur onze ans, de quelque cinq cents millions de dollars par l'État fédéral aux sociétés régionales et villages, chargés d'administrer ces fonds, auxquels vient s'ajouter un demi-milliard au titre des revenus provenant de l'exploitation minière des terres cédées à l'État de l'Alaska. Comme cette indemnité complémentaire serait, autrement, revenue aux autorités de Juneau, celles-ci sont donc associées au règlement des revendications des autochtones.

Deux choses sont à remarquer ici: d'une part, les autochtones du Canada ont toujours suivi de très près la situation de leurs frères de race habitant les États-Unis; d'autre part, le règlement de cette question connaît un grand retentissement dans la presse. Le point de vue officiel sur la solution adoptée est qu'elle doit non seulement permettre de satisfaire aux revendications sur les plans juridique et moral, mais encore favoriser le développement social et économique des collectivités autochtones. Une chose est certaine, c'est qu'elle a incontestablement influé sur la pensée canadienne quant à la nature des règlements à venir en matière de droits aborigènes.

Peu après le règlement de l'*affaire Calder* et la déclaration faite par le Premier ministre devant les chefs indiens de Colombie-Britannique, la Fraternité des autochtones du Yukon adresse un document intitulé *Together Today for Our Children Tomorrow* au chef du gouvernement et à son ministre des Affaires indiennes. Ce texte, dont la rédaction a bénéficié de l'appui financier du Commissaire aux revendications des Indiens, contient certaines propositions quant à la négociation et au règlement des revendications des autochtones du Yukon. Il passe en revue les difficultés que suscitent, pour ces derniers, la récente évolution de leur région et marque l'intention de la FAY d'arriver à une solution susceptible d'aider les indigènes à influer sur le cours de la mise en valeur du Nord et à s'adapter à sa cadence. Il préconise, pour ce faire, la création d'une assise économique contrôlée par les autochtones eux-mêmes et sur laquelle ceux-ci pourront se fonder pour œuvrer à l'amélioration de leur propre vie et de leurs cultures sur un pied d'égalité avec la population non autochtone.

Ce règlement impliquerait notamment la constitution, à l'usage des Indiens, de banques de terrains placées, à perpétuité, sous la tutelle de la Couronne, mais contrôlées par des municipalités autochtones spécialement instituées à cette fin. Ces «banques» se verraient affecter des espaces suffisants pour permettre la création de municipalités où les Indiens pourraient se fixer de façon permanente, de sites historiques et funéraires et de zones de chasse, de pêche et de piégeage. En attendant que ces territoires aient pu être délimités, toutes les terres de la Couronne qui, dans le Yukon, n'ont pas encore été ouvertes, seraient bloquées. Outre ces mesures concernant les terres, la FAY proposait le versement aux autochtones d'une partie de toutes les redevances perçues par le gouvernement et provenant de l'exploitation du gaz naturel, du pétrole, des minéraux, des produits forestiers et de la chasse commerciale. A quoi viendrait s'ajouter une indemnité forfaitaire à titre de règlement de la totalité des griefs collectifs et des revendications individuelles passées.

Par ailleurs, la participation des autochtones à l'examen de toutes les questions relatives à la mise en œuvre et au contrôle de l'exploitation des terres et de l'eau ainsi qu'à la gestion de la faune serait garantie par leur représentation au sein des conseils et organismes compétents. Les droits de chasse et de pêche vivrières et de piégeage sur les terres inoccupées seraient également garantis. Pour une période de vingt-cinq ans, les services de santé seraient dispensés gratuitement et les revenus des terres indiennes exonérés d'impôts. Enfin, une société générale «serait constituée pour administrer les fonds indiens et assurer la formation et l'allocation des ressources», quoique ce contrôle doive graduellement passer aux municipalités elles-mêmes.

La création du comité de négociations appelé de ses vœux par la Fraternité des autochtones du Yukon et recommandée par le Commissaire aux revendications des Indiens fut approuvée par le Premier ministre. Et malgré la difficulté évidente de la tâche à réaliser, la décision du gouvernement d'ouvrir des négociations n'en constitue pas moins un pas important vers le règlement du problème des revendications indigènes au Canada.

En août 1973, la réponse ainsi donnée à la Fraternité des autochtones du Yukon, étoffée, devient déclaration du ministre des Affaires indiennes et du Nord canadien portant sur la politique générale en matière de revendications des Indiens et Inuit. Dans un premier temps, ce texte réaffirme le caractère permanent de la responsabilité que le gouvernement reconnaît avoir à l'égard des autochtones de par l'Acte de l'Amérique du Nord britannique et qualifie la Proclamation royale de 1763 de «déclaration fondamentale du droit du peuple indien à la terre dans ce pays». Plus loin, il fait état de la perte des terres qui ne peuvent plus être ni utilisées ni occupées en Colombie-Britannique, dans le Nord québécois, dans le Yukon et dans les Territoires du Nord-Ouest, régions où pourtant «le droit de propriété des Indiens n'a jamais été éteint par traité ni par aucune loi». Pour ces régions, le gouvernement offre de négocier et de donner au règlement le caractère solennel d'un texte de loi prévoyant des indemnités ou des prestations en contrepartie de la cession de leurs droits par les autochtones, offre qui va de pair avec une prise de conscience du fait que «les revendications ne peuvent pas se ramener uniquement

à une question d'argent ou de terres; elles traduisent aussi la perte d'un mode de vie». La déclaration souligne cependant que si le gouvernement fédéral est habilité à traiter des revendications dans les deux territoires, partout ailleurs les terres dont il est question appartiennent aux provinces. C'est pourquoi il invite instamment les provinces intéressées à se préparer à participer aux négociations et à s'associer aux règlements.

Mais si la déclaration va très loin dans la voie d'une reconnaissance des droits indiens dans les régions ne relevant pas de traités, deux problèmes subsistent. Pour commencer, les principes définis ne s'appliquent pas aux régions méridionales du Québec ni aux provinces Atlantiques, où les revendications territoriales seraient essentiellement différentes de celles qui intéressent les régions où les droits territoriaux originaux ont été reconnus. C'est pourquoi il est proposé que les autochtones et le gouvernement procèdent à une étude plus approfondie de la question. Examen qui paraît d'autant plus nécessaire que, en d'autres endroits du pays, couverts par traité dans leur ensemble, vivent plusieurs groupes et bandes d'Iroquois, de Sioux, etc., qui, eux, ne sont soumis à aucun traité. Deuxièmement la politique gouvernementale suscite de vives inquiétudes chez les Indiens, qui y voient une nette orientation vers la suppression des droits en contrepartie de certaines indemnités. Ils préféreraient de très loin conserver, et protéger, autant de ces droits que possible, surtout en ce qui concerne les terres. Ainsi, les Inuit insistent pour que leurs droits de chasse soient ancrés dans la législation et fondés sur le caractère coutumier de leur droit de chasse sur les terres qu'ils occupent, pour directement ou indirectement subvenir à leurs besoins.

Parallèlement, si elle représente une occasion de régler le contentieux dans au moins quelques-unes des régions ne relevant pas de traités, cette solution n'offre pas grand-chose en matière de règlement des griefs émanant des traités et des revendications précises de certaines bandes portant sur les terres des réserves et les fonds des bandes. Quant à la promesse, réitérée par le gouvernement, d'honorer ses obligations juridiques, elle n'a rien de très révolutionnaire puisque c'est là quelque chose que tous les Canadiens sont en droit d'attendre des autorités. La déclaration reprend néanmoins les propos tenus par la reine aux Indiens, à Calgary, en juillet 1973: «Soyez assurés que mon gouvernement du Canada reconnaît l'importance du respect total de l'esprit et de la lettre de vos traités.»

La vallée du Mackenzie et la baie James

Deux régions du Nord canadien, les Territoires du Nord-Ouest et le secteur québécois de la baie James, ont acquis une importance toute spéciale dans le règlement judiciaire et la négociation des revendications fondées sur le droit de propriété des indigènes depuis la fin de l'*affaire Calder* et l'ouverture des négociations intéressant le Yukon. En effet, dans ces deux régions, les autochtones ont fait valoir leurs droits à la terre afin d'essayer de tenir le coup devant la réalisation de gigantesques projets d'exploitation des ressources et de continuer à contrôler dans toute la mesure du possible les territoires qui étaient traditionnellement

les leurs. Dans les Territoires du Nord-Ouest, les peuplades autochtones sont aux prises avec le vaste projet d'aménagement que constitue la construction du pipe-line qui doit longer le Mackenzie et menace de bouleverser leur mode de vie. C'est en vain qu'ils persistent à exiger du gouvernement qu'il bloque les terres en attendant que leurs revendications aient été examinées. Ils contestent par ailleurs la thèse selon laquelle les traités conclus dans la région auraient éteint leur droit de propriété en arguant du fait que ces accords ne représentent rien de plus que des traités de paix et d'amitié.

Le 2 avril 1973, dans un brevet d'opposition présenté devant le bureau des titres fonciers de Yellowknife, les chefs de quelque seize bandes demandent la reconnaissance du droit de propriété des indigènes sur près de la moitié de la superficie des Territoires du Nord-Ouest. Ce recours a pour but de permettre aux Indiens de revendiquer rétroactivement toutes les concessions qui pourraient dorénavant être accordées au cas où la validité des intérêts qu'ils font valoir serait reconnue. La Cour suprême des Territoires du Nord-Ouest est saisie de l'affaire et il lui est demandé de décider si le brevet d'opposition est recevable. Elle sera de ce fait amenée à entendre les témoignages d'Indiens ayant participé à la négociation des traités.

Au mois de septembre suivant, cette instance rend un jugement provisoire qui déclare le brevet recevable du fait «qu'il subsiste, sur la question de savoir si le droit de propriété plein et entier des autochtones a été éteint, et notamment dans l'esprit des Indiens, des doutes suffisants pour justifier les plaignants dans leurs efforts pour éviter que leur position ne s'érode davantage avant la résolution définitive de la question». Le gouvernement fédéral se pourvoit en appel et l'affaire est inscrite au calendrier de la division d'appel de la Cour suprême des Territoires du Nord-Ouest en juin 1975. Parallèlement à cette procédure, les parties tentent d'ouvrir des négociations et, en janvier 1974, annoncent dans un communiqué mis au point par le président de la Fraternité des Indiens des Territoires du Nord-Ouest et le ministre des Affaires indiennes et du Nord canadien, la création prochaine d'un comité chargé «d'engager les pourparlers préliminaires devant permettre de jeter les bases d'un règlement intégral des revendications des Indiens des Territoires du Nord-Ouest».

Quoi qu'il en soit, pour la Fraternité des Indiens des Territoires du Nord-Ouest comme pour l'Inuit Tapirisat du Canada, il est impératif que le règlement des revendications des autochtones précède la construction du pipe-line et la réalisation de tout autre grand projet d'aménagement. Bien que le gouvernement fédéral n'ait pas encore entièrement, ni même officiellement, admis ce principe, il est évident qu'il s'est rallié à l'idée que le problème devait être résolu au plus vite et de préférence aboutir à une solution négociée.

Tout comme la vallée du Mackenzie, la région de la baie James constitue l'un des territoires cédés au Canada par la Compagnie de la Baie d'Hudson en 1870. Lorsque, en 1912, les frontières du Québec sont redéfinies de façon à y faire entrer une bonne partie de la région, le gouvernement fédéral exige de la province qu'elle reconnaisse les droits des populations autochtones et se charge

de leur extinction. Cette clause restera lettre morte, mais, dans son rapport publié en 1971, la commission Dorion, créée par le gouvernement québécois, conclut que cette obligation incombe effectivement à la province et recommande que des mesures soient prises pour y satisfaire dans les plus brefs délais. Par la suite, l'Association des Indiens du Québec participe, avec le gouvernement de la province, à la définition du cadre de travail qui doit servir aux négociations sur la question des droits territoriaux. Cependant, en mai 1971, alors que cette phase préliminaire est en cours, le gouvernement provincial annonce son intention de mettre en valeur les ressources hydro-électriques de la région de la baie James et, trois mois plus tard, avant même que les représentants des Indiens et les négociateurs provinciaux aient pu se rencontrer, l'assemblée législative québécoise fonde la Société de développement de la baie James, qu'elle habilite, en lui conférant les pouvoirs d'une municipalité, à procéder au développement de la région.

Les études ultérieures tendront à prouver que le projet aurait des effets particulièrement néfastes sur le système écologique et, plus particulièrement, sur le mode de vie traditionnel des populations autochtones. C'est précisément cette menace, qui se double du refus du gouvernement de la province de négocier le report de la mise en œuvre du projet ou sa modification, qui amène les autochtones à intenter une action en justice pour protéger leurs droits. Le 7 novembre 1972, le Grand Conseil des Cris du Québec et l'Association des Inuit du Nouveau-Québec avisent les gouvernements provincial et fédéral et la Société de développement de la baie James de leur intention de demander une injonction interlocutoire pour suspendre les travaux jusqu'à ce que leurs droits aient été reconnus et pris en considération.

En novembre 1973, après un an d'audiences et de délibérations, la Cour supérieure du Québec accorde l'injonction demandée, ordonne l'arrêt des travaux et déclare que les Cris et les Inuit ne peuvent avoir perdu leur droit de propriété du fait que:

> . . . à tout le moins, les indiens Cris et les esquimaux ont exercé des droits personnels et des droits d'usufruit sur le territoire et les terres adjacentes. Ils ont été en possession et ont occupé ces terres et y ont exercé des droits de pêche, de chasse et de trappe depuis des temps immémoriaux. Nous avons déjà démontré que le gouvernement du Canada a passé des traités avec les Indiens toutes les fois qu'il a désiré obtenir des terres pour les besoins de la colonisation ou pour d'autres raisons. Tenant compte de l'obligation assumée par la province de Québec dans la législation de 1912, il apparaît que la province de Québec ne peut développer ou autrement ouvrir ces terres à la colonisation sans agir de la même manière, c'est-à-dire, sans l'entente préalable des indiens et des esquimaux.

Une semaine plus tard, la Cour d'appel du Québec suspendra l'injonction.

Les choses n'en restent cependant pas là; après une vaine tentative de la part des Indiens et Inuit pour saisir de l'affaire la Cour suprême du Canada, la Cour d'appel du Québec, dans une décision du 21 novembre 1974, infirme à l'unanimité le jugement antérieur. L'un des juges, parlant au nom de la Cour, précise même:

> Je suis d'opinion que le droit indien dans le territoire qui nous intéresse est d'une existence douteuse et que les recours qui peuvent en découler, s'ils existent, ne donnent pas ouverture à une injonction pour arrêter les travaux.

Les négociations en cours ont toutefois permis d'aboutir, une semaine auparavant, à la signature d'un accord de principe entre les Cris de la baie James, les Inuit du Québec, les autorités de la province et le gouvernement du Canada. L'accord stipule les conditions dont les autochtones assortiront, le cas échéant, la cession de leurs droits sur les 400,000 milles carrés passés sous contrôle québécois en vertu des lois concernant l'extension des frontières du Québec de 1898 et 1912. Il prévoit notamment la poursuite des négociations afin que les clauses définitives puissent être rédigées avant le 1er novembre 1975 et la continuation des travaux sur le barrage hydro-électrique, compte tenu des modifications approuvées au cours des négociations, sans risque de poursuites judiciaires ultérieures. Toute possibilité de recours n'est pas pour autant écartée, puisqu'une procédure pourra être engagée au cas où l'accord définitif n'aurait pas été conclu à la date prévue.

Aux termes de l'accord, les autochtones se verraient attribuer 5,250 milles carrés sous une forme ou sous une autre (terres de catégorie I), dont 1,274 seraient administrés au nom des Cris selon les modalités prévues par la Loi sur les Indiens. En outre, les autochtones bénéficieraient de droits de chasse, de piégeage et de pêche exclusifs sur 60,000 milles carrés supplémentaires (terres de catégorie II) que le Québec pourrait toutefois exproprier en raison d'impératifs de développement, à conditon de rendre des superficies équivalentes ou, si les autochtones y consentent, de dédommager les intéressés en espèces. De plus, les indigènes bénéficieraient de droits de chasse et de piégeage exclusifs sur certaines espèces animales dans la totalité des territoires cédés et participeraient, sur un pied d'égalité avec les autorités provinciales, à l'administration et au contrôle de la chasse, du piégeage et de la pêche.

Lorsque l'on compare les 600 acres par personne sur lesquels s'exercent les droits au sol et au sous-sol passés sous le contrôle collectif des autochtones, en vertu de l'accord conclu en Alaska, à la solution québécoise qui garantit aux Cris de la baie James les droits au sol sur une moyenne de 200 acres et 2,600 acres de terres de catégorie II par personne, on comprend que le Grand Conseil de la province cherche avant tout à aboutir à un accord qui encourage son peuple à suivre le mode de vie traditionnel.

Sur le plan financier, les compensations se chiffreraient à soixante-quinze millions de dollars, payables en dix ans, dont la moitié imputable au trésor fédéral. Si Ottawa est ainsi mis à contribution, c'est en raison des obligations qui lui incombent en matière d'extinction du droit de propriété des autochtones dans la région cédée à la province de Québec en vertu de l'Acte concernant la délimitation des frontières de 1898 qui, contrairement à la loi de 1912, n'en fait pas une responsabilité provinciale. Les autochtones par ailleurs se verraient verser 75 millions de dollars supplémentaires, prélevés sur les redevances d'origine hydro-électrique et, pendant vingt ans, 25 pour cent de celles que produirait tout aménagement autre qu'hydro-électrique mis en chantier dans la région dans les cinquante

années suivant la signature de l'accord. La province deviendrait propriétaire des droits miniers et des droits au sous-sol, mais devrait cependant négocier une entente et verser une indemnisation ou des redevances pour toute exploitation de ces ressources dans les terres de catégorie I.

L'accord fait également état du projet du gouvernement provincial visant à assurer un revenu annuel minimum aux personnes désireuses de continuer à chasser, piéger et pêcher et prévoyant certains programmes de développement économique spéciaux. Par ailleurs, rien ne serait changé aux programmes, aux diverses formes de subventions ni aux obligations respectives des gouvernements fédéral et provincial, qui continueraient de s'appliquer aux indigènes de la région de la même façon qu'aux autres communautés autochtones du Canada et de la province et d'être «assujettis aux modifications pouvant être apportées de temps à autre aux critères régissant ces programmes». Ces dispositions semblent faire allusion, en ce qui concerne le niveau fédéral, aux secteurs de l'éducation, du logement et de la santé.

Deux clauses de l'accord de principe reflètent les inquiétudes des autochtones au sujet de leur environnement. La première envisage des modifications et des améliorations importantes aux plans des installations hydro-électriques de façon à minimiser les répercussions de leur mise en œuvre sur les communautés et la culture autochtones; la seconde prévoit une étude des conséquences socio-écologiques de toute réalisation projetée pour la région et l'association des autochtones à la prise des décisions une fois connus les résultats de ces recherches.

On ne sait pas encore quelle influence cet accord de principe aura sur l'issue des autres négociations en cours au sujet du droit de propriété des indigènes. Ainsi, parlant des inquiétudes des Inuit, le ministre des Affaires indiennes et du Nord canadien a déclaré qu'il ne le considérait ni comme un modèle ni comme un événement décisif dans l'histoire du règlement des revendications des autres groupes d'autochtones canadiens. Il apparaît cependant, si l'on examine le document de travail récemment présenté aux Indiens du Yukon, que la stratégie suivie dans le cas de la baie James ne laisse pas d'intéresser le gouvernement fédéral.

Les régions relevant des traités

Le point de vue selon lequel les droits découlant des traités ne sont ni permanents ni socialement utiles, implicite dans le Livre blanc de 1969, provoque une vive et énergique réaction de la part des Indiens des régions du Sud canadien couvertes par traité. La riposte des chefs indiens de l'Alberta arrive dès juin 1970, sous la forme d'un opuscule intitulé *Citizens Plus,* bientôt connu sous le nom de *Livre rouge* sur la politique indienne, qui condamne la campagne gouvernementale visant à imposer une politique qui «n'offre pas l'espoir, mais le désespoir». Il affirme notamment que la reconnaissance du statut d'Indien est essentielle au triomphe de la justice et à la sauvegarde de la culture indienne et que les traités représentent «des obligations historiques, morales et légales» sur lesquelles reposent les droits des autochtones de l'Alberta. Se faisant les interprètes des Indiens

relevant des traités, les chefs ajoutent qu'il est maintenant temps de satisfaire à l'esprit des traités, et longtemps resté lettre morte.

En octobre 1971, la Fraternité des Indiens du Manitoba transmet au gouvernement une proposition intitulée *Wahbung: Our Tomorrows,* qui, comme le *Livre rouge,* fait écho à la conviction que: «Les Indiens jouissent d'un 'statut spécial' en vertu de la reconnaissance d'un droit de propriété historique qui ne saurait être ni entravé, ni modifié, ni compromis par quelque arrangement collusoire entre le gouvernement fédéral et les provinces ou par consentement mutuel de ces deux ordres de gouvernement. Or, c'est une relation que nous considérons comme sacrée et inviolable.» Le Grand Conseil du Traité nº 3 ajoutera l'année suivante, lors de la présentation au ministre de son mémoire sur le développement économique et social:

> S'il doit avoir quelque signification pour nous, c'est au présent que le traité qui le concerne doit parler à notre peuple ... La valeur des terres que les Indiens ont cédées à Sa Majesté s'est accrue de beaucoup et nous, Indiens, reconnaissons ce fait comme nous acceptons les termes de notre traité. Mais c'est précisément parce que nous reconnaissons un traité qui n'a pas de limites temporelles et dont la signature devait engager l'avenir des descendants des deux parties que nous vous demandons aujourd'hui d'étudier avec nous ce que ses deux clauses économiques doivent maintenant signifier pour notre peuple.

Un peu plus tard, dans un rapport au Commissaire aux revendications, la Fédération des Indiens de la Saskatchewan s'adresse plus particulièrement à la question du contenu des droits découlant des traités et des liens de ces droits entre eux:

> ... une fois replacés dans leur contexte historique et interprétés à la lumière des graves problèmes qui se posent aux tribus des plaines, les traités intéressant la Saskatchewan apparaissent comme autant de plans d'ensemble visant à assurer la survie économique et sociale des bandes de la province. Dès lors, vouloir les considérer comme «un ramassis» de «droits» et d'«avantages» sans rapport les uns avec les autres — même si l'authenticité de ces droits et avantages est indéniable — c'est se livrer à une analyse par trop simpliste et refuser d'en reconnaître pleinement la portée et l'intention.

La réaction suscitée par le Livre blanc chez les Indiens relevant de traités a donné au gouvernement un avant-goût des revendications qu'il peut s'attendre à voir formuler à propos des traités. Ces Indiens se refusent à présenter des revendications partielles, et tout donne à penser qu'ils seront en mesure de faire connaître l'ensemble de leurs griefs d'ici un ou deux ans. Dans l'immédiat, ils trouvent quelque intérêt à engager des discussions préliminaires au sujet des problèmes les plus brûlants, notamment en matière d'éducation et de droits de chasse et de pêche, mais les autres, ceux qui concernent le progrès économique, la fiscalité et les services d'hygiène, sans oublier la question fondamentale que pose la désagrégation de l'administration tribale et du tissu communautaire, ne tarderont pas à se faire jour.

Le gouvernement continue de recevoir et d'analyser divers mémoires, que lui adressent les associations d'Indiens relevant de traités, mais persiste à ne pas

les considérer comme des revendications en bonne et due forme. Et on ne peut pas dire qu'il y donne véritablement réponse, puisqu'il ne fait guère que réitérer l'assurance que toutes les obligations juridiques seront honorées, en ajoutant, dans sa déclaration d'intentions politiques d'août 1973 qu'il respectera «l'esprit et la lettre» des traités. Sur un autre plan, hormis dans les Territoires du Nord-Ouest, la participation des provinces au règlement de ces questions reste épineuse; d'autant plus, en fait, que sur bon nombre de points, aucun accord ne semble pouvoir être conclu sans la collaboration des provinces.

Tout examen des revendications découlant des traités devra être mené de front avec la refonte de la Loi sur les Indiens. Les Indiens de l'Alberta et de la Saskatchewan qui relèvent de traités (et peut-être ceux d'autres régions) voient dans la révision de cette Loi un moyen de concrétiser la reconnaissance des droits que les traités leur ont reconnus. Et il semble qu'aucune modification profonde ne puisse être apportée au texte avant qu'aient été résolus les problèmes fondamentaux de toutes les régions, qu'elles relèvent ou non de traités.

Les revendications des bandes

Depuis que, en 1970, le gouvernement a décidé de subventionner les recherches nécessaires à la préparation des revendications, les bandes ont présenté un nombre considérable de plaintes qui, pour la plupart, font état de pertes de terres ayant fait partie des réserves; elles proviennent en majorité des Maritimes et des Prairies, mais aussi du Québec, de l'Ontario et de la Colombie-Britannique. Certaines ont été transmises au ministère des Affaires indiennes et du Nord canadien, les autres au Commissaire.

Ces revendications exercent sur le gouvernement une pression qu'il peut difficilement ignorer et le pousse à réagir. A en juger par l'urgence de certaines questions et le fait qu'il existe potentiellement des centaines, sinon des milliers de plaintes semblables, il est plus que probable que cette situation ne peut guère devenir que plus critique encore. Et si quelques-uns des griefs peuvent se résoudre indépendamment de toute autre considération, la majeure partie d'entre eux ne pourra l'être qu'une fois réglés des problèmes tout a fait fondamentaux; cela parce qu'il fait éviter de porter de graves préjudices aux intérêts de la collectivité indienne dans son ensemble. S'il est urgent de régler le contentieux qui existe dans le cas de telle ou telle bande, il faut en effet admettre le caractère impératif de la nécessité d'une méthode garantissant l'association de tous les Indiens de la région concernée à la résolution des questions les plus cruciales. Mais il importe de bien se rendre compte, avant de s'engager dans cette voie, de la complexité de la plupart des questions et du fait qu'il faudra beaucoup de temps à la majorité des bandes pour effectuer les recherches nécessaires, débattre de la situation et présenter leur cas. Or, pour le moment, abstraction faite de sa promesse de respecter ses obligations juridiques, le gouvernement ne semble pas s'être donné une politique de règlement de ces revendications. Et tant qu'il n'en sera pas arrivé à un accord avec les Indiens sur les questions fondamentales, il

sera difficile de trouver une solution convenable aux litiges particuliers intéressant telle ou telle bande.

Vers un nouveau mode de règlement

En avril 1975, à l'occasion d'une rencontre entre la Fraternité nationale des Indiens et un comité composé de ministres fédéraux, un nouveau mode de règlement des revendications, mis au point dans le cadre des consultations entre les Indiens des Prairies et le Commissaire aux revendications, a été proposé. Les représentants du gouvernement lui ont donné leur caution de principe.

Dans l'examen des revendications, le processus de base consisterait à permettre aux associations provinciales et territoriales représentant les Indiens de recevoir les griefs et de les présenter directement à des ministres du Cabinet, où serait étudiée la possibilité de trouver un terrain d'entente. Ce processus permettrait notamment de définir les principes généraux et les paramètres des mécanismes de règlement et, une fois trouvé le terrain d'entente, de déléguer l'autorité nécessaire à l'étude du détail des modalités de résolution. Dans certains cas cependant, il pourrait en aller autrement, soit qu'un deuxième palier de négociations entre en jeu, soit qu'un appareil administratif paraisse plus approprié, soit encore qu'il semble préférable d'en référer aux tribunaux ou à des cours d'arbitrage spécialement créées à cet effet. Par leur diversité même, ces processus permettraient d'adapter le mode de règlement à la nature du problème et de fonder la recherche d'une solution sur des accords de principe quant aux questions fondamentales. Pour faciliter les négociations, on propose en outre la création d'une commission consultative nouvelle et impartiale.

L'accord serait axé entièrement sur des principes novateurs et serait chargé de régler le problème des revendications. Sa création devrait ouvrir l'ère de la liquidation négociée du contentieux.

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v. 2: From March 1975.

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v. 1: From 24 March 1970;
v. 2: From 1 June 1973;
v. 3: From March 1975.

Provincial Legislation.
v. 1: From Jan. 1970.

Quebec
v. 1: From 6 Feb. 1970;
v. 2: From March 1974.

Reserves in Canada.
v. 1: From 6 Feb. 1970;
v. 2: From Feb. 1974.

Royal Canadian Mounted Police.
v. 1: From Jan. 1973.

Six Nations.
v. 1: From 9 June 1970.

Treaties in Canada.
v. 1: From 15 April 1970;
v. 2: From March 1975.

United States.
v. 1: From 27 Aug. 1970;
v. 2: From 15 Sept. 1973.

Yukon and Northwest Territories.
v. 1: From 26 March 1970;
v. 2: From May 1973;
v. 3: From July 1973;
v. 4: From June 1974.

Yukon Native Brotherhood.
v. 1: From 6 June 1971;
v. 2: From 7 Dec. 1972.

Appendix II / Appendice II

CANADIAN LEGAL DECISIONS RELATING TO NATIVE PEOPLES / JUGEMENTS RENDUS AU CANADA DANS DES AFFAIRES CONCERNANT LES AUTOCHTONES

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No.* / N° de citation**
[*In Re* The] Adoption Act	B.C. Sup. Ct., May 1973 (Unreported) 44 D.L.R. 3d 718 (B.C. Ct. A. 1974) Sup. Ct., Oct. 1975 (Unreported)	
Alberta Panel Buildings Ltd. v. Sarcee Band	Alta. Sup. Ct., App. Div. Oct. 1971 (Unreported)	
Antoine v. Antoine	B.C. Sup. Ct., Jan. 1968 (Unreported)	
Armour v. Township of Onondaga	42 Sup. Ct. 218 (1907)	1643
Armstrong Growers' Association v. Harris	[1924] 1 W.W.R. 729 (B.C. Ct. A.)	1455
Atkins v. Davis	34 D.L.R. 69 (Ont. Sup. Ct. App. Div. 1917)	1588
Attorney-General of Alberta v. Cardinal	Alta. Sup. Ct., Tr. Div., May 1971 (Unreported) 22 D.L.R. 3d 716 (Alta. Sup. Ct., App. Div. 1971) 6 W.W.R. (n.s.) 205 (Sup. Ct. 1973)	1430
Attorney-General of British Columbia v. Attorney-General of Canada	14 A.C. 295 (P.C. 1889)	

*In Abler, T.S. and S.M. Weaver, eds. *A Canadian Indian Bibliography, 1960-1970*. Toronto, University of Toronto Press, 1974.

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
Attorney-General of British Columbia v. McDonald	131 Can. Crim. Cas. 126 (B.C. Cty. Ct. 1961)	1435
Attorney-General of British Columbia v. Sport	B.C. Cty. Ct., June 1971 (Unreported)	1436
Attorney-General for Canada v. Attorney-General for Ontario and Attorney-General for Quebec v. Attorney-General for Ontario (*Robinson Annuities*)	[1897] A.C. 199 (P.C. 1896)	1491
Attorney-General for Canada v. Fowlds	18 Grant Chan. 433 (Ont. 1871)	
Attorney-General for Canada v. Giroux	24 Qué. B.R. 433 (1915) 53 Sup. Ct. 172 (1916)	
Attorney-General of Canada v. Morrow, J.	6 W.W.R. (n.s.) 150 (Fed. Ct. Tr. Div. 1973)	
Avery v. Cayuga	5 Ont. W.N. 471 (Div. Ct. 1913) 13 D.L.R. 275 (Ont. Sup. Ct. App. Div. 1913)	1584
Bastien v. Hoffman	Qué. R. Jud. Rev. 238 (Dist. Que. Q.B. 1867)	
Bay v. R.	Fed. Ct. A., May 1974 (Unreported)	
[*Re*] Indian Custom Adoptions: [*Re*] Beaulieu's Petition	67 W.W.R. (n.s.) 669 (N.W.T. Ter. Ct. 1969)	1525
Beaulieu v. Petitpas	[1959] Qué. R. Prat. 86 (C.S.)	
Bedard v. Isaac, *et al.*	[1972] 2 Ont. 391 (H. Ct. Jus. 1971) 36 D.L.R. 3d 481 (Sup. Ct. 1973)	1578
[*In Re*] Bellerose Family; in the Matter of the Indian Act, 1951, ch. 29	Alta. Dist. Ct., Oct. 1956 (Unreported)	
Beyak v. R.	[1938] 2 W.W.R. 153 (Man. K.B.)	1499
Booth v. R.	14 Can. Exch. 115 (1913) 51 Sup. Ct. 20 (1915)	1645

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
Boucher v. Montour	20 Qué. C.S. 291 (1901)	1611
Boulton v. Jeffrey	1 E. & A. 111 (U.C. Ex. Council 1845)	
Brown v. West	1 U.C.J. (o.s.) 639 (Chan. 1845) 1 E. & A. 117 (U.C. Ex. Council 1846)	
Brick Cartage Limited v. R.	[1965] Can. Exch. 102 (1964)	
Bridge v. Johnston	40 CLJ 709 (Ont. Div'l. Ct. 1904)	1573
Brossard v. D'Aillebout	15 Qué. R. Prat. 412 (C.S. 1914)	
Bryce, McMurrich & Co. v. Salt	11 Ont. P.R. 112 (Ch. 1885)	1541
Burk v. Cormier, *et al.*	30 N.B. 142 (Ct. A. 1890)	1507
Bussières, *et al.* v. Bastien	17 Qué. C.S. 189 (C. de Cir. 1900)	1593
Calder, *et al.* v. Attorney-General of British Columbia (See Appendix III)	8 D.L.R. 3d 59 (B.C. Sup. Ct. 1969) 74 W.W.R. (n.s.) 481 (B.C. Ct. A. 1970) 4 W.W.R. (n.s.) 1 (Sup. Ct. 1973)	1450
[*Re*] Caledonia Milling Co. v. Johns	42 Ont. L.R. 338 (Ont. H. Ct. Ch. 1918)	1575
[*Re*] Campbell	5 Man. 262 (Q.B. 1888)	
Campbell v. Hall	1 Cowp. 204 (J.C.P.C. 1774) 98 E.R. 1045 (J.C.P.C. 1774)	
Campbell v. Sandy	4 D.L.R. 2d 754 (Ont. Cty. Ct. 1956)	1548
Canada v. Ontario (*Treaty 3 Annuities*)	[1910] A.C. 637 (P.C.)	1489
Canard v. Attorney-General of Canada and Rees	4 W.W.R. (n.s.) 618 (Man. Q.B. 1972) 5 W.W.R. (n.s.) 678 (Man. Ct. A. 1972) Sup. Ct., Jan. 1975 (Unreported)	
Carter v. Nichol	1 W.W.R. 392 (Sask. Sup. Ct. 1911)	1637
Charbonneau v. De Lorimier	8 Qué. R. Prat. 115 (Cir. Ct. 1906)	1592
Cherrier v. Terihonkow	5 M.L.R. 33 (Q.B. 1889)	1596
Children's Aid Society of Eastern Manitoba, *et al.* v. Rural Municipality of St. Clements	6 W.W.R. (n.s.) 39 (Man. Ct. A. 1952)	

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
Chisholm v. Herkimer	19 Ont. L.R. 600 (Wkly. Ct. 1909)	
Chisholm v. R.	[1948] Can. Exch. 370	1484
Church v. Fenton	28 U.C.C.P. 384 (Ont. Cmn. Pl. 1878) 4 O.A.R. 159 (Ct. A. 1879) 5 Sup. Ct. 239 (1880)	1556
[R. *ex. rel.*] Clinton v. Strongquill	[1953] 2 D.L.R. 264 (Sask. Ct. A.)	1618
Commissaires d'Écoles du Canton de Maniwaki v. Brady	66 Qué. C.S. 41 (1928)	
Commissioner of Indian Lands v. Jannel	1 L.C.L.J. 111 (L. Ct. 1866)	
Commissioner of Indian Lands for Lower Canada v. Payant dit St. Onge	3 Lower Canada Jurist 313 (S. Ct. 1856)	
Connolly v. Woolrich and Johnson, *et al.*	11 Lower Canada Jurist 197 (S. Ct. 1867) Qué. R.L. 253 (C. d'A. 1869)	1614
[*Re*] Cooke; The County of Bruce v. The City of Hamilton	[1955] Ont. W.N. 812 (Ct. A.)	
Corinthe, *et al.* v. Le Séminaire de Saint-Sulpice	21 Qué. B.R. 316 (1911) 5 D.L.R. 263 (J.C.P.C. 1912)	1492
[*Ex parte*] Cote	[1971] 3 Can. Crim. Cas. 2d (n.s.) 383 (Sask. Q.B.) [1971] 5 Can. Crim. Cas. 2d (n.s.) 49 (Sask. Ct. A.)	
Crepin v. Delorimier, *et al.*	68 Qué. C.S. 36 (1929)	1607
Cross v. Delorimier et Letourneau	73 Qué. C.S. 377 (1935) 62 Qué. B.R. 98 (1937)	1594
D'Ailleboust v. Bellefleur	25 Qué. R.L. 50 (C.S. 1918)	
[*Re*] Deborah E4-789	3 W.W.R. (n.s.) 194 (N.W.T. Ter. Ct. 1972) 5 W.W.R. (n.s.) 203 (N.W.T. Ct. A. 1972)	1526
Delisle v. Shawinigan Water & Power Co.	[1941] 4 D.L.R. 556 (Que. S. Ct.)	1608
Delorimier v. Delorimier	74 Qué. C.S. 101 (1935)	

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
[*In Re*] Derocher	Sask. Dist. Ct., Sept. 1956 (Unreported)	
Diabo v. Rice	[1942] Qué. C.S. 418 (1940)	1602
Dimensional Investments Limited v. R.	[1966] Can. Exch. 761	
Dion v. La Compagnie de la Baie d'Hudson	51 Qué. C.S. 413 (1917)	
Douglas, *et al.* v. Mill Creek Lumber Company	[1923] 1 W.W.R. 529 (B.C. Ct. A.)	1474
Dreaver, *et al.* v. R.	Can. Exch., Apr. 1935 (Unreported)	1475
Durand v. Sioui	4 Qué. R.L. 93 (C. de Cir. 1878)	
[*Re*] Eskimos	[1939] 2 D.L.R. 417 (Sup. Ct.)	1641
Fahey v. Roberts	N.B. Sup. Ct., K.B., Dec. 1916 (Unreported)	
Fegan v. McLean	29 U.C.Q.B. 202 (Ont. Q.B. 1869)	1564
Feldman v. Jocks	74 Qué. C.S. 56 (1935)	
Fisher v. Albert	64 D.L.R. 153 (Ont. Sup. Ct. 1921)	
Francis v. R.	3 D.L.R. 2d 641 (Sup. Ct. 1956)	1648
Fraser v. Pouliot et Jones	13 Qué. R.L. 520 (B.R. 1885) [1886] Sup. Ct. 327	
[*Re*] Froman	[1973] 2 Ont. 360 (Cty. Ct.)	
Geoffries v. Williams (*alias* Well)	26 W.W.R. (n.s.) 323 (B.C. Cty. Ct. 1958)	1446
[Regina *ex rel.*] Gibb v. White	5 P.R. 315 (Ont. Ch. 1870)	1542
Gingrich v. R.	29 W.W.R. (n.s.) 471 (Alta. Sup. Ct., App. Div. 1958)	
[*Ex parte*] Goodine	25 N.B. 151 (Sup. Ct. 1885)	1513
[*In Re* the Inquiries Act (Part II) and the] Gordon Band of Indians, Pelletier and Bird	Sask. Dist. Ct., Dec. 1956 (Unreported)	
[*In Re*] Gordon	Sask. Dist. Ct., Dec. 1956 (Unreported)	
Hannis v. Turcotte & Maurault	8 Qué. R.L. 708 (C.S. 1878)	

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
Hardy v. Desjarlais. Kerr v. Desjarlais	4 Western Law Times Reports 26 (Man. Q.B. 1893)	1502
Henry, *et al.* v. R.	9 Can. Exch. 417 (1905)	1480
[*Ex parte*] Hill	31 N.B. 84 (Ct. A. 1891)	1508
[*Re*] Hill v. Telford	12 Ont. W.R. 1090 (Div'l. Ct. 1908)	1572
Hunter v. Gilkison	7 Ont. 735 (Q.B. 1885)	1562
[The Department of] Indian Affairs v. Board of Investigation under Water Act, and Crosina	36 B.C. 62 (Ct. A. 1925)	1454
Isaac, *et al.* v. Davey, *et al.*	[1973] 3 Ont. 677 (H. Ct. Jus.) Ont. Ct. A., Oct. 1974 (Unreported)	
Jackson v. Wilkes	4 U.C.K.B. (o.s.) 142 (1835)	
Jacobs v. United Power Company Limited	65 Qué. C.S. 133 (1927)	1604
Johnson v. Jones and Tobicoke	31 C. L. J. 101 (Ont. Ch. 1895)	1547
Johnston v. Robertson	13 Can. Crim. Cas. 452 (N.S. Sup. Ct. 1908)	1539
[*In Re*] Johnstone	Sask. Dist. Ct., Nov. 1956 (Unreported)	
Jones v. Grand Trunk R.W. Co.	3 Ont. W.R. 705 (Tr. Ct. 1904) 5 Ont. W.R. 611 (Ct. A. 1905)	1553
[*Re*] Kakfwi	N.W.T. Ter. Ct., Jan. 1970 (Unreported)	
Kallooar v. R.	50 W.W.R. (n.s.) 602 (N.W.T. Ter. Ct. 1964)	1533
[Town of] Kamsack v. Canadian Northern Town Properties Co. Ltd.	68 D.L.R. 660 (Sask. K.B. 1922)	1621
[*Re*] Kane	[1940] 1 D.L.R. 390 (N.S. Cty. Ct. 1939)	1537
Kanatewat, *et al.* v. James Bay Development Corporation, *et al.*	See Appendix V	
[*Re* Adoption of] Katie E7-1807	32 D.L.R. 2d 686 (N.W.T. Ter. Ct. 1961)	1531
[*In Re* Indian Band Membership to] King	Ont. Dist. Ct., Feb. 1957 (Unreported)	

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
[*Re*] Labrador Boundary	[1927] 2 D.L.R. 401 (J.C.P.C.)	
Lafleur v. Cherrier	5 L.N. 411 (Qué. C.S. 1882)	
Languedoc v. Laviolette	8 L.C.R. 257 (B.R. 1858)	
[*Re*] Lavell and Attorney-General of Canada	22 D.L.R. 3d 182 (Ont. Cty. Ct. 1971) 22 D.L.R. 3d 188 (Fed. Ct. A. 1971) 36 D.L.R. 3d 481 (Sup. Ct. 1973)	1487
Lazare et un autre v. The St. Lawrence Seaway Authority	[1957] Qué. C.S. 5 (1956)	1609
[*Ex parte*] Lefort v. Dugas	3 M.L.R. 298 (S. Ct. 1887)	1605
Lepage v. Watzo	8 Qué. R.L. 596 (C. de Cir. 1878)	
Levesque v. Dubé	[1949] Qué. R. Prat. (C.S. 1948)	
L'Hirondelle (Antoine) v. R.	16 Can. Exch. 193 (1916)	1476
L'Hirondelle (Joseph) v. R.	16 Can. Exch. 196 (1916)	1477
[*In Re*] Lightfoot and *In Re* the Indian Act ch. 149 R.S.C.	Sask. Dist. Ct., July 1954 (Unreported)	
Logan v. Styres, *et al.*	20 D.L.R. 2d 416 (Ont. H. Ct. 1959)	
[*Re*] Louis, *et al.*	B.C. Cty. Ct., Dec. 1956 (Unreported)	
McKinnon v. Van Every	5 P.R. 284 (Ont. Ch. 1870)	1543
McLean v. McIsaac, *et al.*	18 N.S. 304 (Sup. Ct. 1885)	1538
[*In Re*] McNeil [Bob]	B.C. Cty. Ct., Oct. 1956 (Unreported)	
Manitoba Hospital Commission v. Klein and Spence	67 W.W.R. (n.s.) 440 (Man. Q.B. 1969) 9 D.L.R. 3d 423 (Man. Ct. A. 1969)	1504
Manitoba—Provincial Municipal Assessor v. Rural Municipality of Harrison	3 W.W.R. (n.s.) 735 (Man. Q.B. 1971)	1505
[*Re*] Mathers	7 Man. 434 (Dist. Ct. 1891) 1 Western Law Times Reports 235 (Man. Dist. Ct. 1891)	1501
[*In Re*] Merasty	Sask. Dist. Ct., Sept. 1956 (Unreported)	

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
Merriman v. Pacific Great Eastern Railway Company	[1922] 1 W.W.R. 935 (B.C. Ct. A.)	1459
[*Re*] Metcalfe	17 Ont. 357 (Chan. Div. 1889)	1545
Miller v. R.	[1950] 1 D.L.R. 513 (Sup. Ct. 1949)	1655
[*Re*] Milloy and the Municipal Council of the Township of Onondaga	6 Ont. 573 (Cmn. Pl. Div. 1884)	
[La Cité de] Montréal v. Bluefeather	39 R. de J. 100 (C. de Recorder 1933)	
[*Re*] Moostoos	N.W.T., 1899 (Unreported)	
[*In Re*] Moses	Ont. Cty. Ct., May 1962 (Unreported)	
Mowat v. Casgrain (Attorney-General for Canada v. Attorney-General for Quebec)	6 Qué. B.R. 12 (1897)	1597
John Murdock Limitée v. La Commission des Relations Ouvrières et autres	[1956] Qué. R.L. 257 (C.S. 1955) [1956] Qué. C.S. 30 (1955)	1603
Mutchmore v. Davis	14 Grant Chan. 346 (Ont. 1868)	
Myiow, *et al.* v. Perrier	[1958] Qué. R. Prat. 212 (C.S. 1957)	
[*Re*] Nelson	[1936] Ont. 31 (H. Ct. Jus. 1935)	1576
Nianentsiasa v. Akwirente *et al.*	3 L.C.J. 316 (Q.B. 1859)	
[*Re*] Noah Estate	32 D.L.R. 2d 185 (N.W.T. Ter. Ct. 1961)	1530
Ontario Mining Company, Limited v. Seybold	32 Sup. Ct. 1 (1901) [1903] A.C. 73 (P.C. 1902)	1493
Pap-wee-in, *et al.* v. Beaudry, *et al.*	[1933] 1 W.W.R. 138 (Sask. K.B. 1932)	
Patterson v. Lane	6 Terr. L.R. 92 (1904)	
Patton *et vir.* v. Héritiers de Feu Marion F. Allen	30 Qué. R.L. (C.S.1924)	1606
[*In Re* Baptiste] Paul	2 W.W.R. 892 (Alta. Sup. Ct. 1912)	1429
[*In Re* Baptiste] Paul (no. 2)	2 W.W.R. 927 (Alta. Sup. Ct. 1912)	
[*Re*] Paulette's Application to file a Caveat (no. 1)	6 W.W.R. (n.s.) 97 (N.W.T. Sup. Ct. 1973)	

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
[*Re*] Paulette's Application to file a Caveat (no. 2) (See Appendix IV)	6 W.W.R. (n.s.) 115 (N.W.T. Sup. Ct. 1973) N.W.T. Ct. A., Nov. 1975	
[*In Re*] Peepeekeesis Band	Sask. Dist. Ct., Dec. 1956 (Unreported)	
Petersen v. Cree and Canadian Pacific Express Co.	79 Qué. C.S. 1 (1940)	1612
Point v. Dibblee Construction Co., *et al.*	[1934] Ont. 142 (Sup. Ct.)	1586
[*Re*] Joseph Poitras	20 W.W.R. (n.s.) 545 (Sask. Dist. Ct. 1956)	1629
Poitras, *et al.* v. Attorney-General for Alberta	68 W.W.R. (n.s.) 224 (Alta, Sup. Ct. 1969)	
Pope v. Paul	[1937] 2 W.W.R. 449 (B.C. Cty. Ct.)	1442
Prince v. Tracey	13 D.L.R. 818 (Man. K.B. 1913)	1500
Procureur-Général de Québec v. Groslouis	[1944] Qué. R.L. 12 (C.S.P. 1943)	1599
Procureur-Général de Québec v. Williams	[1944] Qué. D.L. 347 (C.S.P.); 82 Can. Crim. Cas. 166 (Qué. C.S.P. 1944)	1598
Procureur-Général de Québec et The Star Chrome Mining Company v. Thompson et Procureur-Général du Canada	[1917] Qué. R.L. 271 (B.R.) 1 A.C. 401 (P.C. 1920)	1488
Quebec v. Dominion of Canada	30 Sup. Ct. 151 (1898)	1650
R. v. Alward	30 C.L.J. 429 (Ont. H. Ct. Jus., Q.B. Div. 1894)	
R. v. Atkinson	6 W.W.R. 1055 (Man. K.B. 1914)	1498
R. v. Baby	12 U.C.R. 346 (Q.B. 1855)	
R. v. Baldhead	[1966] 4 Can. Crim. Cas. (n.s.) 183 (Sask. Ct. A.)	
R. v. Bear	63 W.W.R. (n.s.) 754 (Sask. Dist. Ct. 1968)	1627
R. v. "Bear's Shin Bone"	4 Terr. L.R. 173 (N.W.T. Sup. Ct. 1899)	1517

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
R. v. Beboning	13 Can. Crim. Cas. 405 (Ont. Ct. A. 1908)	1552
R. v. Benjoe	130 Can. Crim. Cas. 238 (Sask. Q.B. 1961)	1624
R. v. Bennett	55 Can. Crim. Cas. 27 (Ont. Cty. Ct. 1930)	1550
R. v. Bonhomme	38 D.L.R. 647 (Can. Exch. 1917) 59 Sup. Ct. 679 (1918)	1642
R. v. Brown	55 Can. Crim. Cas. 29 (Toronto Pol. Ct. 1930)	1580
R. v. Carlick	[1966] 3 Can. Crim. Cas. (n.s.) 323 (Y.T. Pol. Mag. Ct. 1965)	1657
R. v. Carrachelo	29 Can. Crim. 27 (B.C. Sup. Ct. 1958)	
R. v. Chan Lung Toy	[1924] 3 W.W.R. 196 (B.C. Sup. Ct.)	1467
R. v. Chew Deb	18 B.C. 23 (Dist. Ct. 1913)	1463
R. v. Commanda	72 Can. Crim. Cas. 246 (Ont. Sup. Ct. 1939)	1587
R. v. Connolly	109 Can. Crim. Cas. 378 (Sask. Mag. Ct. 1954)	1634
R. v. Cooper	44 Can. Crim. Cas. 314 (B.C. Ct. A. 1925)	1453
R. v. Cooper, George and George	1 D.L.R. 3d 113 (B.C. Sup. Ct. 1968)	1468
R. v. Cornelius	5 C.L.Q. 511 (Ont. Mag. Ct. 1962)	
R. v. Cowichan Agricultural Society	[1951] 1 D.L.R. 96 (Can. Exch. 1950)	1486
[White and] R. v. Daniels	56 W.W.R. (n.s.) 234 (Man. Ct. A. 1966) [1969] 1 Can. Crim. Cas. (n.s.) 299 (Sup. Ct. 1968)	1646
R. v. Dennis & Dennis	B.C. Prov. Ct., Nov. 1974 (Unreported)	
R. v. Derriksan	B.C. Prov. Ct., Aug. 1971 (Unreported) B.C. Sup. Ct., Sept. 1974 (Unreported) B.C. Ct. A., Feb. 1975 (Unreported)	1464

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
R. v. Devereux	[1965] Sup. Ct. 567	
R. v. Discon and Baker	67 D.L.R. 2d 619 (B.C. Cty. Ct. 1968)	1437
R. v. Drybones	60 W.W.R. (n.s.) 321 (N.W.T. Ter. Ct. 1967) [1968] 2 Can. Crim. Cas. (n.s.) 69 (N.W.T. Ct. A. 1967) 9 D.L.R. 3d 473 (Sup. Ct. 1969)	1640
R. v. Ear	49 Can. Crim. 42 (Alta. Dist. Ct. 1966)	1422
R. v. Easterbrook	[1929] Can. Exch. 28 (1928) [1931] Sup. Ct. 210 (1930)	1656
R. v. Edelston	17 Can. Crim. Cas. 155 (Sask. Dist. Ct. 1910)	1625
R. v. Esagok W3-433	N.W.T. Ter. Ct., Jan. 1971 (Unreported)	
R. v. Farrar	1 N.W.T.R. 13 (N.W.T. Sup. Ct. 1890)	1521
R. v. Fearman	10 Ont. 660 (Q.B. 1885)	1561
R. v. Fearman	22 Ont. 456 (Cmn. Pl. 1892)	1557
R. v. Field	N.W.T. Ter. Ct., June 1967 (Unreported)	
R. v. Fireman	[1971] 3 Ont. 380 (Ct. A.)	
R. v. Fitzgerald	1 W.W.R. 109 (Alta. Sup. Ct. 1911)	1426
R. v. Francis	N.B. Mag. Ct., Jan. 1968 (Unreported) N.B. Cty. Ct., June 1969 (Unreported) 10 D.L.R. 3d 189 (N.B. Sup. Ct. A. Div. 1969)	1509
R. v. Frank	Alta. Prov. Ct., Sept. 1974 (Unreported)	
R. v. Gee	5 Can. Crim. Cas. 148 (B.C. Cty. Ct. 1901)	1439
R. v. Gehrke	11 Can. Crim. Cas. 109 (N.W.T. Sup. Ct. 1906)	1516

Case / Affaire	*Legal Reference / Référence juridique*	*Abstract No. / N° de citation*
R. v. General	Ont. Prov. Ct., Cr. Div., Apr. 1970 (Unreported)	
R. v. George	55 D.L.R. 2d 386 (Sup. Ct. 1966)	1638
R. v. Ginger	B.C. Ct. A., Dec. 1966 (Unreported)	
R. v. Godin	36 Can. Crim. Cas. 191 (Ont. Sup. Ct. 1921)	1591
R. v. Gonzales	34 W.W.R. (n.s.) 622 (B.C. Mag. Ct. 1961)	
R. v. Gonzales, *Re* Indian Act	35 W.W.R. (n.s.) 703 (B.C. Sup. Ct. 1961) 37 W.W.R. (n.s.) 257 (B.C. Ct. A. 1962)	 1449
R. v. Good	17 Ont. 725 (Cmn. Pl. Div. 1889)	1559
R. v. Gow (*alias* Joe)	11 Can. Crim. Cas. 81 (B.C. Sup. Ct. 1906)	1465
R. v. Gray	3 West. L.R. 564 (N.W.T. Sup. Ct. 1906)	1514
R. v. Green	12 Ont. P.R. 373 (Q.B. 1888)	1566
R. v. Gullberg	[1933] 3 W.W.R. 639 (Alta. Dist. Ct.)	1421
R. v. Guthrie	41 U.C.R. 148 (Ont. Q.B. 1877)	1563
R. v. Heisler	13 East. L.R. 375 (N.S. Sup. Ct. 1913)	
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Proceedings at Trial and Addresses by Counsel, 31st March–9th April 1969.
Exhibits [included in *Appeal Books*].
Judgment, 17 Oct. 1969 [8 D.L.R. 3d 59].

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Superior Court, District of Montreal/Cour Supérieure, Montréal

Plaintiffs' Declaration, 2nd May, 1972.

Kanatewat, Chief Robert, *et al.* v. James Bay Development Corporation, *et al.*

Superior Court, District of Montreal/Cour Supérieure, Montréal

Plaintiffs' Amended Declaration, 25th October, 1972.

Plaintiffs' Petition for an Interlocutory Injunction, 25th October, 1972.

Plaintiffs' Amended Petition for an Interlocutory Injunction, 26th October, 1972.

Plaintiffs' Notice, 7th November, 1972.

Petitioners' Attorney's Letter to Mr. Justice Albert Malouf [*re* Legal Authorities of Petitioners discussed at the meeting of Mr. Justice Malouf and the Attorneys for Petitioners and Respondents on November 17th, 1972. Montreal, 20th November, 1972].

Transcripts of Proceedings, 17th November, 1972 to 21st June, 1973 [an Index to these Documents is included in this Appendix].

Petitioners' Notes and Authorities, 21st June, 1973 [together with Schedule A: General Description of the James Bay Project; Schedule B: Hydro-Electric Project Description; Schedule C: Proof of Petitioners respecting traditional and present possession, occupation and use of Northern Quebec, including the Territory described by Bill 50].

Jugement, 15 novembre, 1973.

Judgment, 15th November, 1973.

Court of Appeal (Quebec)/Cour d'Appel (Québec)

Requêtes des intimés pour une suspension de l'injonction interlocutoire. 16 novembre 1973.

Jugement en date du 22 novembre 1973 [suspendant l'injonction interlocutoire].

Judgment, 22 November, 1973 [suspending the interlocutory injunction made by the Quebec Superior Court].

Supreme Court of Canada/Cour Suprême du Canada

Jugement, 21 décembre 1973 [rejetant la requête pour permission d'appeler de la décision de la Cour d'Appel du 22 novembre 1973].

Judgment, 21 December 1973 [rejecting the request for permission to appeal the decision of the Quebec Court of Appeal of 22 November, 1973].

Court of Appeal (Quebec)/Cour d'Appel (Québec)

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Supreme Court of Canada/Cour Suprême du Canada

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La Société de Développement de la Baie James, *et al.* v. Chef Robert Kanatewat, *et al.*

Court of Appeal (Quebec)/Cour d'Appel (Québec)

Factum des Appelantes, Montréal, 24 mai 1974.
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Volume	*Date*	*Witness*
XXXVI	14/ 3/73	Poitras, G.; Pilote, C.; Levasseur, L.; Savage, J.; Boulanger, G.
XXXVII	15/ 3/73	Landry, A.; Lindley, T.; Beaudet, M.
XXXVIII	19/ 3/73	Vigneault, M.; Renaud, J.-P.; Lefebvre, A.
XXXIX	20/ 3/73	Patry, M.; Amyot, P.
XL	21/ 3/73	Amyot, P.
XLI	22/ 3/73	Amyot, P.; Murphy, D.K.; Levay, J.
XLII	26/ 3/73	Wiebe, P.; Sabourin, P.
XLIII	27/ 3/73	Frenette, M.; Therrien, J.-C.; Hotte, P.-A.; Pelchat, C.
XLIV	28/ 3/73	Pelchat, C.; Gadbois, A.; Lachance, R.; Lefebvre, G.
XLV	2/ 4/73	Chadwick, W.L.; Duguay, P.; Bourassa, J.-P.; Paquin, A.; Charest, M.
XLVI	3/ 4/73	Lamontagne, M.; Fauchon, Y.; Poulson, A.; Jones, H.G.; Robin, C.; Rousseau, A.
XLVII	4/ 4/73	Michel, B.; Perrier, R.
XLVIII	5/ 4/73	Morrissette, J.; Pelletier, D.; Frechette, J.-L.; Moisan, G.
XLIX	9/ 4/73	Moisan, G.; Labossière, G.; Brochu, R.; Beaudoin, P.; Carle, A.
L	10/ 4/73	Beaulieu, R.; Ingram, W.; Rancourt, F.; de Courval, M.-P.; Dancoste, R.; Martel, P.
LI	11/ 4/73	Jurdant, M.; Gillespie, D.
LII	12/ 4/73	Ostrofsky, M.L.
LIII	16/ 4/73	Betrand, P.; Mansfield, A.W.
LIV	17/ 4/73	Marsolais, R.-D.; Laroche, G.
LV	18/ 4/73	Fortin, R.; Magnin, E.
LVI	19/ 4/73	Seguin, L.R.; Dumouchel, A.
LVII	24/ 4/73	Cayer, R.; Dubé, J.-J.-M.; Bordeleau, G.
LVIII	25/ 4/73	Bordeleau, G.; Stewart, R.D.
LIX-LXIII	26/ 4/73 3, 4, 7, 8/5/73	Bourbeau, J.
LXIV	9/ 5/73	Bourbeau, J.; Laford, G.; Charuk, J.G.; Watt, C.; Diamond, A.W.
LXV	10/ 5/73	Bearskin, J.; Rat, W.; Cox, P.; Gill, A.; Pepabano, J.; Feit, H.; Sandy, D.; Kanatewat, R.

Volume	*Date*	*Witness/Témoin*
LXVI	14/ 5/73	Granberg, H.; Penn, A.; Spence, J.
LXVII	17/ 5/73	Spence, J.; Bourbeau, J.
LXVIII	18/ 5/73	Bourbeau, J.; Skinnarland, E.
LXIX	22/ 5/73	Khazzoom, J.D.
LXX	23/ 5/73	Khazzoom, J.D.
LXXI	24/ 5/73	Skinnarland, E.
LXXII-LXXV	13, 14, 15, 18/ 6/73	Argumentation—Counsels for Petitioners/ Procureurs des requérants
LXXVI-LXXVIII	19, 20, 21/ 6/73	Argumentation—Counsels for Petitioners and Respondents/Procureurs des requérants et des intimés

Quebec, Government of. *Summary of the Final Agreement*. Quebec, Nov. 1975.

Québec, Gouvernement du. *Baie James : sommaire de l'entente finale*. Québec, nov. 1975.

Appendix VI / Appendice VI

SELECTED LEGAL DECISIONS RESPECTING UNITED STATES' INDIANS / SÉLECTION DE JUGEMENTS RENDUS AUX ÉTATS-UNIS DANS DES AFFAIRES CONCERNANT LES AUTOCHTONES

Case/Affaire	*Legal Reference / Référence juridique*	*Textual Reference*/ Référence aux textes*
Acosta v. County of San Diego	126 Cal. App. 2d 455 (1954)	MP: 238, 251, 333
Agua Caliente Band of Mission Indians v. County of Riverside	442 F. 2d 1184 (9th Cir. 1971), cert. denied, 405 U.S. 933 (1972)	MP: 253, 254, 259, 269
Akins v. Saxbe	U.S. District Court, Maine (Unreported, 1974)	
Allen v. Merrell	6 Utah 2d 32 (1956)	WW: 2779 MP: 235
Arenas v. U.S.	322 U.S. 419 (1944)	MP: 544, 562, 619
Arizona v. California, *et al.*	373 U.S. 546 (1963)	MP: 313
Arizona [State of] *ex rel.* Merrill v. Turtle	413 F. 2d 683 (9th Cir. 1969)	WW: 2931 MP: 68, 120, 189, 322, 348, 677
Barta v. Oglala Sioux Tribe of Pine Ridge Reservation of South Dakota	259 F. 2d 553 (8th Cir. 1958)	MP: 630, 721, 731, 745
Beecher v. Wetherby	95 U.S. 517 (1877)	MP: 366, 379, 426 NRC 2: 42
Beltrami [County of] v. County of Hennepin	119 N.W. 2d 25 (Minn. 1963)	MP: 242, 270, 272

*Included here are the principal cases cited in Price, Monroe E., *Law and the American Indian: Readings, Notes and Cases*, Indianapolis, 1973 (MP), the judgments reprinted in Washburn, W.E. (ed.), *The American Indian and the United States: A Documentary History*, New York, 1973 (WW), the cases discussed in Cohen, Felix S., Original Indian Title, *Minnesota Law Review*, Vol. 32, 1947, pp. 28-59 (FC), and the United States cases cited in Cumming, P.A. and Mickenberg, N.H., *Native Rights in Canada*. 2d ed. Toronto, 1972 (NRC 2).

Case / Affaire	*Legal Reference / Référence juridique*	*Textual Reference / Référence aux textes*
Buster v. Wright	135 F. 947 (9th Cir. 1905), appeal dismissed, 203 U.S. 599 (1906)	WW: 2710 MP: 176, 631
Buttz v. Northern Pacific Railroad	119 U.S. 55 (1886)	MP: 379, 467 NRC 2: 41, 42 FC: 52
Cherokee Nation v. The State of Georgia	30 U.S. (5 Pet.) 1 (1831)	WW: 2554 MP: 17, 19, 33, 324, 365, 390, 426, 457
Cherokee Nation v. Hitchcock	187 U.S. 294 (1902)	MP: 419, 422, 455, 483, 484, 757
Cherokee Tobacco Case	78 U.S. (11 Wall.) 616 (1870)	WW: 2649 MP: 420, 427
Choctaw Nation, *et al.* v. Oklahoma, *et al.*	397 U.S. 620 (1970)	
Chouteau v. Molony	57 U.S. (16 How.) 203 (1853)	MP: 379 FC: 51
Colliflower v. Garland	342 F. 2d 369 (9th Cir. 1965)	WW: 2839 MP: 129, 677, 721, 733, 739, 743, 745
Commissioner of Taxation v. Brun	286 Minn. 43 (1970)	MP: 248, 269, 276
Confederated Tribes of Warm Springs Reservation of Oregon v. U.S.	177 Ct. Cl. 184 (1966)	NRC 2: 49, 50
Conrad Inv. Co. v. U.S.	161 F. 829 (9th Cir. 1908)	MP: 320
Cramer, *et al.* v. U.S.	261 U.S. 219 (1923)	MP: 457 NRC 2: 15, 31, 42 FC: 53
[*Ex parte*] Crow Dog	109 U.S. 556 (1883)	WW: 2655 MP: 4, 14, 81, 120, 127, 184, 674, 784
Crow Tribe of Indians v. U.S.	284 F. 2d 361 (Ct. Cl. 1960)	NRC 2: 266
Dodge v. Nakai	298 F. Supp. 26 (D. Ariz. 1969)	WW: 2913 MP: 173, 605, 630, 747, 750, 776

Case / Affaire	*Legal Reference / Référence juridique*	*Textual Reference / Référence aux textes*
Elk v. Wilkins	112 U.S. 94 (1884)	WW: 2667 MP: 94, 224, 230, 256, 736
Federal Power Commission v. Tuscarora Indian Nation	362 U.S. 99 (1960)	WW: 2792 MP: 257, 385, 441
Fletcher v. Peck	10 U.S. (6 Cranch) 87 (1810)	MP: 202
Fort Berthold Reservation v. U.S.	16 Ind. Cl. Comm'n 341 (1965)	MP: 480
Fort Berthold Reservation [Three Affiliated Tribes], *et al.* v. U.S.	390 F. 2d 686 (Ct. Cl. 1968)	WW: 2888 MP: 482
[*In re*] Fredenberg	65 F. Supp. 4 (E.D. Wis. 1946)	MP: 336, 337, 340
Gila River Pima-Maricopa Indian Community *et al.* v. U.S.	20 Ind. Cl. Comm'n 131 (1968), aff'd. 427 F. 2d 1194 (Ct. Cl.), cert. denied 400 U.S. 819 (1970)	WW: 2963 MP: 477
Goodell v. Jackson	11 Am. Dec. 351 (1823)	MP: 52, 64, 203, 228, 379
Hall v. St. Helena Parish School Board, *et al.*	197 F. Supp. 649 (E.D. La. 1961)	MP: 101
Hawaii v. Mankichi	190 U.S. 197 (1903)	MP: 107, 737
[*In Re*] High Pine's Petition	99 N.W. 2d 38 (S.D. 1959)	MP: 214, 337, 340
Holden v. Joy	84 U.S. (17 Wall.) 211 (1872)	MP: 6 NRC 2: 41 FC: 51
Iron Crow v. Oglala Sioux Tribe	129 F. Supp. 15 (D.S. Dak. 1955), aff'd. 231 F. 2d 89 (8th Cir. 1956)	WW: 2768 MP: 126, 630, 677, 735
[Application of] Jimmerson	255 N.Y.S. 2d 627	MP: 130
Johnson and Graham's Lessee v. McIntosh	21 U.S. (8 Wheat.) 240 (1823)	WW: 2537 MP: 17, 20, 359, 426, 443, 532 NRC 2: 3, 16–19, 31, 33, 34, 38, 40, 101, 191, 193 FC: 47
[Organized Village of] Kake v. Egan	369 U.S. 60 (1962)	WW: 2826 MP: 68, 124, 188, 189, 330, 343, 736

Case/Affaire	*Legal Reference / Référence juridique*	*Textual Reference/ Référence aux textes*
[New York *ex rel.*] Kennedy v. Becker	241 U.S. 556 (1916)	MP: 304
Kennerly, *et al.* v. District Court of Montana, *et al.*	400 U.S. 423 (1971)	MP: 16, 188, 203, 216, 241, 285, 289, 333, 346, 347, 610
Lipan Apache Tribe, *et al.* v. U.S.	180 Ct. Cl. 387 (1967)	WW: 2859 MP: 450 NRC 2: 43, 192, 193
Littell v. Nakai	344 F. 2d 486 (9th Cir. 1965)	WW: 2854 MP: 120, 347, 349, 633
Lone Wolf v. Hitchcock	187 U.S. 553 (1903)	WW: 2705 MP: 187, 419, 420 425, 483, 484, 757
Lummi Tribe of Indians v. U.S.	181 Ct. Cl. 753 (1967)	MP: 475 has 5 ICC 543 480 has 16 ICC 526 (1966) NRC 2: 49, 51, 274
McClanahan v. Arizona State Tax Commission	14 Ariz. App. 452 (1971)	MP: 188, 209, 273, 274
	411 U.S. 164 (1973)	WW: 3018
Maison v. Confederated Tribes of Umatilla Indian Reservation	314 F. 2d 169 (9th Cir. 1963), cert. denied, 375 U.S. 829 (1963)	MP: 296, 302, 304
Makah Indian Tribe v. Clallam County	73 Wash. 2d 677 (1968)	WW: 2906 MP: 266
Marsh v. Alabama	326 U.S. 501 (1946)	MP: 740
Marshall, *et al.* v. Clark	1 Kentucky Reports 77 (1791)	
Menominee Tribe v. U.S.	391 U.S. 404 (1968)	WW: 2883 MP: 200, 266, 283, 296, 299, 457, 586
Miami Tribe of Oklahoma v. U.S.	175 F. Supp. 926 (Ct. Cl. 1959) 281 F. 2d 202 (Ct. Cl. 1960), cert. denied, 366 U.S. 924 (1961)	NRC 2: 41 WW: 2812 MP: 482 NRC 2: 247
Minnesota v. Hitchcock	185 U.S. 373 (1902)	MP: 264, 355 NRC 2: 40

Case/Affaire	*Legal Reference/ Référence juridique*	*Textual Reference/ Référence aux textes*
Mitchel, *et al.* v. U.S.	34 U.S. (9 Pet.) 711 (1835)	MP: 379 NRC 2: 40, 11 FC: 50
Morgan v. Colorado River Indian Tribe	103 Ariz. 425 (1968)	MP: 342, 637, 748
Native American Church v. Navajo Tribal Council	272 F. 2d 131 (10th Cir. 1959)	WW: 2788 MP: 731, 735, 748, 775
New Mexico [State of] v. Warner	379 P. 2d 66 (1963)	MP: 68, 337, 343
Nez Perce Tribe of Indians v. U.S.	176 Ct. Cl. 815 (1966), cert. denied, 386 U.S. 984 (1967)	NRC 2: 251
Nooksack Tribe of Indians v. U.S.	162 Ct. Cl. 712 (1963)	NRC 2: 46
Northwestern Bands of Shoshone Indians v. U.S.	324 U.S. 335 (1945)	MP: 459
Osage Nation of Indians v. U.S.	97 F. Supp. 381 (Ct. Cl. 1951), cert. denied, 342 U.S. 896 (1951)	NRC 2: 251
Otoe and Missouria Tribe of Indians v. U.S.	131 F. Supp. 265 (Ct. Cl. 1955), cert. denied, 350 U.S. 848 (1955)	MP: 472, 473 NRC 2: 37, 45, 46, 47
Paiz v. Hughes	417 P. 2d 51 (1966)	MP: 344
[Joint Tribal Council of the] Passamaquoddy Tribe, *et al.* v. Secretary, Department of the Interior, *et al.*	U.S. Dist. Ct., Maine, Northern Division (Unreported, 1975)	
Pawnee Indian Tribe of Oklahoma v. U.S.	124 Ct. Cl. 324 (1953)	MP: 357, 621 NRC 2: 259
People v. Rhoades	90 Cal. Reptr. 794 (1970)	WW: 2985 MP: 282, 289
Peoria Tribe of Indians of Oklahoma, *et al.* v. U.S.	390 U.S. 468 (1968)	NRC 2: 252
Pilgrim, *et al.* v. Beck, *et al.*	69 F. 895 (C.C.D. Neb. 1895)	MP: 559
Pueblo De Zia, *et al.* v. U.S.	165 Ct. Cl. 501 (1964)	NRC 2: 49
Puyallup Tribe v. State of Washington Department of Game	391 U.S. 392 (1967)	WW: 2878 MP: 301, 673

Case/Affaire	*Legal Reference / Référence juridique*	*Textual Reference/ Référence aux textes*
Pyramid Lake Paiute v. Morton	Civil Action 2506 (D.D.C. 1972)	WW: 3011 MP: 319
Quick Bear v. Leupp	210 U.S. 50 (1908)	MP: 694
Rainbow, *et al.* v. Young	161 F. 835 (8th Cir. 1908)	MP: 169, 722
Ruiz v. Morton	462 F. 2d 818 (9th Cir. 1972)	WW: 3005 MP: 242
[In the Matter of the Complaint of the Chiefs of the] St. Regis Mohawk Reservation for Removal of Intruders upon Tribal Lands	State of New York, Franklin County Court (Unreported, 1973)	
Sac and Fox Tribe of Indians of Oklahoma, *et al.* v. U.S.	315 F. 2d 896 (Ct. Cl. 1963), cert. denied, 375 U.S. 921 (1963)	MP: See p. 476 on 17 Ind. Cl. Comm'n 544 (1966) NRC 2: 49, 248
Seneca Nation of Indians v. U.S.	173 Ct. Cl. 917 (1965)	MP: 383
Settler v. Yakima Tribal Court	419 F. 2d 486 (9th Cir. 1969)	MP: 295, 737, 739
Shoshone Tribe of Indians v. U.S.	299 U.S. 476 (1937)	MP: 450, 456, 469, 476, 482, 484
Simmons v. Eagle Seelatsee	244 F. Supp. 808 (E.D. Wash. 1965)	MP: 755, 756
Sioux Tribe of Indians v. U.S.	97 Ct. Cl. 613 (1942), cert. denied, 318 U.S. 789	MP: 436, 441
Sioux Tribe of Indians, *et al.* v. U.S.	146 F. Supp. 229 (Ct. Cl. 1956)	NRC 2: 251
Snohomish County v. Seattle Disposal Co., *et al.*	425 P. 2d 22 (Wash. 1967), cert. denied, 389 U.S. 1016 (1967)	MP: 66, 265, 277, 280, 281, 287, 292
Sohappy v. Smith	302 F. Supp. 899 (D. Ore. 1969)	WW: 2936 MP: 295, 308
Solomon, *et al.* v. LaRose, *et al.*	335 F. Supp. 715 (D. Neb. 1971)	MP: 744, 764
Spokane Tribe of Indians v. U.S.	163 Ct. Cl. 58 (1963)	NRC 2: 50
Squire v. Capoeman	351 U.S. 1 (1955)	WW: 2763 MP: 257, 264, 278

Case/Affaire	*Legal Reference/ Référence juridique*	*Textual Reference/ Référence aux textes*
Standing Bear, U.S. *ex rel.* v. Crook	25 F. Cas. 695 (No. 14,891) (C.C.D. Neb. 1879)	MP: 229, 789
Swift v. Leach, *et al.*	178 N.W. 437 (N.D. 1920)	MP: 230
Talton v. Mayes	163 U.S. 376 (1895)	WW: 2699 MP: 631, 731, 737
Tee-Hit-Ton Indians v. U.S.	348 U.S. 272 (1955)	WW: 2752 MP: 367, 379, 467 NRC 2: 37, 38, 42, 45–46
Tennessee [State of] v. Foreman	16 Tenn. 256 (1835)	MP: 31, 47, 64, 377
Tlingit and Haida Indians of Alaska v. U.S.	177 F. Supp. 452 (Ct. Cl. 1959) 389 F. 2d 778 (Ct. Cl. 1968)	NRC 2: 249, 260
Tulee v. State of Washington	315 U.S. 681 (1942)	MP: 302, 305
Tuttle, *et al.* v. Moore, *et al.*	64 S.W. 585 (Ind. Terr. 1901)	MP: 447
Udall v. Littell	366 F. 2d 668 (D.C. Cir. 1966)	MP: 167, 723
U.S. v. Ahtanum Irrigation District, *et al.*	236 F. 2d 321 (9th Cir. 1956) 330 F. 2d 897 (9th Cir. 1964) 338 F. 2d 307 (9th Cir. 1964)	MP: 321
U.S. v. Alcea Band of Tillamooks, *et al.*	329 U.S. 40 (1946)	WW: 2739 MP: 465 NRC 2: 37, 41, 42, 44, 46, 25 FC: 56
	341 U.S. 48 (1951)	WW: 2751
U.S. v. Bailey	24 F. Cas. 937 (No. 14,495) (C.C. Tenn. 1834)	MP: 57, 63, 64
U.S. v. Blackfeet Tribal Court of the Blackfeet Indian Reservation	244 F. Supp. 474 (D. Mont. 1965)	MP: 632
U.S. v. Cisna	25 F. Cas. 422 (No. 14,795) (C.C.D. Ohio 1835)	MP: 49, 53, 63, 64, 203
U.S. v. Clapox	35 F. 575 (D.C. Ore. 1888)	WW: 2964 MP: 19, 86, 525, 677, 739
U.S. v. Delaware Indians	Court of Claims (Unreported, 1970)	WW: 2971
U.S. v. Higgins	103 F. 348 (Cir. Ct. D. Mont. 1900)	NRC 2: 9

Case/Affaire	*Legal Reference/ Référence juridique*	*Textual Reference/ Référence aux textes*
U.S. v. Kagama	118 U.S. 375 (1886)	WW: 2686 MP: 3, 12, 17, 19, 20, 31, 214, 233, 324, 427, 457, 735
U.S. v. Northern Paiute Nation, *et al.*	393 F. 2d 786 (Ct. Cl. 1968)	MP: 449 NRC 2: 41, 43
U.S. v. Rickert	188 U.S. 432 (1903)	MP: 258, 265, 543
U.S. v. Rogers	45 U.S. (4 How.) 567 (1846)	MP: 13, 60, 64 NRC 2: 9
U.S. v. Sandoval	231 U.S. 28 (1913)	MP: 19, 112, 325, 457
U.S. [as guardian of Hualpai] v. Santa Fe Pacific Railroad Co.	314 U.S. 339 (1941)	WW: 2730 MP: 419, 463, 466 NRC 2: 15, 37, 40, 41, 42–43, 49, 192 FC: 55
U.S. v. Seminole Indians of the State of Florida and the Seminole Nation of Oklahoma	180 Ct. Cl. 375 (1967)	WW: 2869 NRC 2: 49–50
U.S. v. Shoshone Tribe of Indians	304 U.S. 111 (1938)	NRC 2: 41 FC: 54
U.S. v.[The Native Village of] Unalakleet, *et al.*	Court of Claims (Unreported, 1969)	WW: 2922
U.S. v. Walker River Irr. Dist., *et al.*	104 F. 2d 334 (9th Cir. 1939)	MP: 321
U.S. v. [State of] Washington	U.S. District Court, W. District of Washington (Unreported, 1974)	
U.S. v. Winans	198 U.S. 371 (1905)	MP: 304, 318
Upper Chehalis Tribe v. U.S.	155 F. Supp. 226 (Ct. Cl. 1957)	NRC 2: 50
Vermillion v. Spotted Elk	85 N.W. 2d 432 (N.D. 1957)	MP: 215, 340, 345
Waldron v. U.S.	143 F. 413 (C.C.S.D. 1905)	WW: 2722 MP: 755
Warren Trading Post Co. v. Arizona Tax Commission	380 U.S. 685 (1965)	WW: 2851 MP: 65, 193, 200, 253, 271

Case/Affaire	*Legal Reference/ Référence juridique*	*Textual Reference/ Référence aux textes*
Washington [State of], Department of Game v. Kautz, *et al.*	422 P. 2d 771 (1967)	
Washington [State of] v. McCoy	387 P. 2d 942 (1963)	MP: 304
Washington [State of] v. Moses, *et al.*	422 P. 2d 755 (1967) 483 P. 2d 832 (1971)	MP: 309
Washington [State of], Department of Game v. Puyallup Tribe, Inc., *et al.*	422 P. 2d 754 (1967)	
Washington [State of] v. Satiacum	Supreme Court of Washington (Unreported, 1972)	WW: 3003
Washington [State of] v. Superior Court for Okanagan County	356 P. 2d 985 (1960)	MP: 333
Washington [State of] v. Tulee	109 P. 2d 280 (1941)	
Williams v. Lee	358 U.S. 217 (1959)	WW: 2785 MP: 66, 120, 184, 197, 202, 204, 208, 210, 277, 289, 335, 338, 342, 345, 634, 674
Winnebago Tribe of Indians v. U.S.	100 Ct. Cl. 1 (1942)	MP: 440
Winters v. U.S.	207 U.S. 564 (1908)	WW: 2727 MP: 311, 316
Wisconsin [State of] v. Doxtater	2 N.W. 439 (1879)	MP: 61, 203
Worcester v. Georgia	31 U.S. (6 Pet.) 515 (1832)	WW: 2603 MP: 17, 40, 63, 65, 121, 184, 186, 197, 203, 252, 255, 334, 377, 390, 426, 463, 466, 784 NRC 2: 16–19, 33, 60 FC: 49

Appendix VII / Appendice VII

MISCELLANEOUS IMPERIAL AND COMMONWEALTH LEGAL DECISIONS / JUGEMENTS DIVERS RENDUS DANS DES PAYS DE L'EMPIRE BRITANNIQUE ET DU COMMONWEALTH

Case/Affaire	*Legal Reference/Référence juridique*
Adeyinka Oyekan, *et al.* v. Musendiku Adele	[1957] 2 All E.R. 785
Amodu Tijani v. The Secretary, Southern Nigeria	[1921] 2 A.C. 399
Assets Company, Limited, *et al.* v. Mere Roihi, *et al.*	[1905] A.C. 176
Attorney-General v. Brown	[1847] 1 Legge 312; 2 S.C.R. (N.S.W.) App. 30
[*In re* The] Bed of the Wanganui River	[1955] N.Z.L.R. 419 [1962] N.Z.L.R. 600
Benggong v. Bougainville Copper Pty. Ltd.	45 A.L.J.R. 412 (1971)
Cook, *et al.* v. Sprigg	[1899] A.C. 572
Cooper v. Stuart	14 A.C. 286 (1899)
[The] Custodian of Expropriated Property, *et al.* v. Tedep, *et al.*	113 C.L.R. 318 (1964)
Geita Sebea, *et al.* v. The Territory of Papua	67 C.L.R. 544 (1941)
Hoani Te Heuheu Tukino v. Aotea District Maori Land Board	[1941] A.C. 308
Inspector of Fisheries v. Ihaia Weepu, *et al.*	[1956] N.Z.L.R. 920
Manu Kapua, *et al.* v. Para Haimona, *et al.*	[1913] A.C. 761
Mathaman, *et al.* v. Nabalco Pty. Ltd., *et al.*	41 F.L.R. 10 (1969)
Milirrpum, *et al.* v. Nabalco Pty. Ltd. and The Commonwealth of Australia	17 F.L.R. 141 (1971)
[*In re* The] Ninety-Mile Beach	[1963] N.Z.L.R. 461
Nireaha Tamaki v. Baker	[1901] A.C. 561

Case/Affaire	*Legal Reference/Référence juridique*
R. v. Symonds	[1847] N.Z.P.C.C. 387
Salaca v. R.	[1967] N.Z.L.R. 421
Secretary of State for India in Council v. Bai Rajbai	[1915] L.R. 42 Ind. App. 229
Secretary of State in Council of India v. Kamachee Boye Sahaba	[1859] 13 Moo. P.C. 22; 15 E.R. 9
Secretary of State for India v. Sardar Rustam Khan, *et al.*	[1941] A.C. 356
[*In re*] Southern Rhodesia	[1919] A.C. 211
Tamihana Korokai v. The Solicitor-General	32 N.Z.L.R. 321 (1913)
Teori Tau v. Commonwealth of Australia, *et al.*	119 C.L.R. 564 (1969)
Te Teira Te Paea, *et al.* v. Te Roera Tareha, *et al.*	[1902] A.C. 56 (1901)
Vajesingji Joravarsingji, *et al.* v. Secretary of State for India in Council	[1924] L.R. 51 Ind. App. 357
Wallis, *et al.* v. Solicitor-General for New Zealand	[1903] A.C. 173
Wi Parata v. The Bishop of Wellington and The Attorney-General	3 N.Z. Jur. [n.s.] 72 (1877)